

**Calendar No. 637****104th Congress }  
2d Session }****SENATE****{ REPORT  
{ 104-373****INTERNATIONAL DOLPHIN CONSERVATION  
PROGRAM ACT****R E P O R T**

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION**

on

**S. 1420**

SEPTEMBER 30, 1996.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

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### INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

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Mr. PRESSLER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### REPORT

[To accompany S. 1420]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1420) to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

#### PURPOSE OF THE BILL

The purposes of S.1420, the International Dolphin Conservation Program Act (the Act), are to: (1) give effect to the Declaration of Panama, signed October 4, 1995, by the governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu and Venezuela, relating to the protection of dolphins, and the conservation and management of tuna in the eastern tropical Pacific Ocean (ETP) including the establishment of the International Dolphin Conservation Program (IDCP); (2) recognize that nations fishing for tuna in the ETP have achieved significant reductions in dolphin mortality associated with the fishery; and (3) eliminate the current ban on imports of tuna from nations that are in compliance with the IDCP.

#### BACKGROUND AND NEEDS

The eastern tropical Pacific Ocean, an area of more than five million square miles ranging from southern California down the coast to Chile is home to one of the world's most economically important fisheries, the yellowfin tuna fishery (*Thunnus albacares*). Develop-

ment of this fishery began in the early 1900's, mostly by baitboat fishermen from the United States. By the 1950's, however, the U.S. fleet suffered economic hardship due to foreign competition and the poor efficiency of baitboat fishing. When the first U.S. baitboat converted to purse-seine fishing in 1957, efficiency more than doubled. Newly-developed synthetic nets and power blocks used to retrieve the nets made this form of fishing particularly efficient, and within a few years all baitboats had been converted to purse-seine vessels.

For reasons not yet understood, large yellowfin tuna tend to congregate beneath schools of dolphins in the ETP. Fishermen are able to locate these large tuna schools by sighting the surfacing dolphins. Since the 1950's fishermen have deployed large purse-seine nets around schools of dolphins to harvest the tuna swimming below, a practice known as "setting on dolphins" or "fishing on dolphins." This practice can kill or injure dolphins because the dolphins become entangled in the nets and may drown or suffer from other injuries as the net is hauled back. Since the purse seine fleet first began extensive fishing operations in the ETP in 1959, the practice of setting on dolphins has been estimated to have killed or injured over 6 million dolphins according to the National Marine Fisheries Service. Much of this total dolphin mortality occurred before national legislation to conserve dolphin populations was enacted, before U.S. market access was denied to nations that practice setting on dolphins, and before international agreements to reduce dolphin mortality were initiated with other yellowfin tuna harvesting nations in the ETP.

After enactment of the Marine Mammal Protection Act (MMPA) in 1972, the number of dolphins killed annually by the American fleet, declined significantly, from nearly 360,000 in 1972 to about 20,000 in 1980. The American fleet was the largest yellowfin tuna harvesting fleet in the ETP during this period. This decrease was achieved through regulations requiring the use of improved gear and fishing practices, on-board federal observers, and numerical quotas setting maximum numbers of dolphins permitted to be killed each year. In 1981, the Congress adopted amendments which stated that the goal of reducing dolphin mortality would be satisfied in the ETP yellowfin tuna purse-seine fishery through the continued application of the best marine mammal safety techniques and equipment that are economically and technologically practicable. Even with these improvements, occasionally dolphins become tangled in the net and are drowned or seriously injured. This source of dolphin mortality and the biological, economic, and political effects of programs developed nationally and internationally to reduce dolphin mortality has been the subject of strong debate.

During the reauthorization of the Marine Mammal Protection Act (MMPA) in 1984, the U.S. tuna industry and the environmental community raised concerns that the progress realized by the U.S. fleet in reducing dolphin mortality was being offset by increased mortalities occurring in the foreign tuna fleet. The U.S. fleet is required by the MMPA to reduce the adverse effects of human activities on marine mammals, and attempt to reduce the incidental mortality and serious injury of marine mammals in commercial fishing to insignificant levels approaching zero. Because the U.S. is the largest market for canned tuna, the MMPA was

amended to require each nation seeking access to the U.S. market to document that their adopted dolphin protection program and incidental mortality rate were “comparable” to that of the U.S. fleet. Nations failing to meet the comparability requirements became subject to a U.S. ban on tuna imports.

The 1984 MMPA “comparable” standards were not implemented until March of 1988, and in the interim, dolphin mortality by foreign fleets steadily increased. By 1986, vessels from at least eight different nations fished for yellowfin tuna with purse-seine vessels in the ETP. These foreign vessels composed roughly 70% of the tuna fleet, had dolphin mortality levels nearly four times that of U.S. vessels, and were estimated to kill more than 100,000 dolphins annually according to figures from the Inter-American Tropical Tuna Commission (IATTC). In response, further amendments to U.S. law were enacted which affected both the U.S. fleet and foreign-flagged tuna fishing fleets wishing to import tuna into the U.S. These amendments included a prohibition on setting nets on dolphins at sundown, a prohibition on using all but the weakest explosive devices for herding dolphins and tuna, and the establishment of a skipper performance system. Additionally, these amendments gave specific guidance as to when a foreign dolphin protection program would be considered “comparable” to that of the United States.

This guidance included requirements for remedial training for skippers with poor records, regulations equivalent to those for U.S. vessels, and an observer program comparable to that of the U.S. fleet. Perhaps most important was the requirement that the per vessel annual dolphin mortality rate of any foreign tuna fishing fleet be less than 1.25 times that of the U.S. fleet. Any nation not satisfying these conditions would be prevented from exporting tuna to the U.S. Also, the 1988 amendments prevented the importation of tuna into the United States from third party or “intermediary” nations that do not meet the comparability standard in order to prevent tuna not caught in compliance with the MMPA from being “laundered” to avoid the U.S. embargo.

On April 12, 1990, the Starkist Seafood Company (a subsidiary of the H.J. Heinz Company) announced its policy to discontinue purchase of any tuna caught in association with dolphins, and began to label cans of tuna sold in the United States with a “dolphin-safe” label, largely in response to public concern over dolphin mortality. Van Camp Seafood (Chicken of the Sea), and Bumble Bee, and other smaller canned tuna suppliers quickly followed with similar dolphin-safe labeling policies. The three major companies accounted for over 80 percent of canned tuna sold in the United States.

Following this voluntary action, the Dolphin Protection Consumer Information Act was introduced and later added as an amendment to the Fishery Conservation Amendments of 1990, to codify criteria for labeling tuna and tuna products as dolphin-safe. To qualify as dolphin-safe, tuna caught in the ETP must have been caught either by a vessel too small to deploy nets around dolphins, or, for larger vessels, be accompanied by certification from a qualified observer that no “dolphin sets” were made for the entire fish-

ing trip. This Act further specified that tuna caught in driftnets could not qualify for the dolphin-safe label.

In August 1990 the United States embargoed tuna imports from Mexico, Venezuela, and Vanuatu for failure to meet the MMPA comparability requirements. In response, Mexico requested consultations with the United States. After bilateral consultations failed to result in an accord, on January 25, 1991, Mexico challenged the MMPA as a non-tariff trade barrier under the General Agreement on Tariffs and Trade (GATT) and requested the establishment of a three member dispute settlement panel to review the MMPA trade sanction provisions. Japan, Canada, and the European Economic Community submitted briefs on Mexico's behalf. On September 16, 1991, the panel delivered its decision in favor of Mexico. The GATT panel found that the U.S. ban on tuna imports was in violation of GATT and concluded that the MMPA embargo provisions were not permissible. The panel did, however, determine that the canned tuna-labelling law was not inconsistent with GATT. The GATT Council, however, did not immediately adopt the panel's findings. Consequently, the U.S. is not technically in violation of GATT at this time. Mexico has not reinstituted the challenge to the World Trade Organization (WTO), the successor to GATT. Embargoes of tuna from Colombia, Mexico, Panama, Vanuatu, and Venezuela, and intermediary nation embargoes against Costa Rica, Italy, and Japan are currently in effect.

#### IMPROVED FISHING METHODS AND THE REDUCTION OF DOLPHIN MORTALITY

The average yearly catch of yellowfin tuna in the ETP for the past several years has been greater than 300,000 short tons and, according to Inter-American Tropical Tuna Commission (IATTC) reports, the stock is capable of sustaining harvests at this level. The yellowfin tuna associated with dolphins tend to be larger, more sexually mature, and more valuable than tuna caught by other methods of fishing in the ETP. Alternatives to setting on dolphins include setting nets around schools of tuna attracted to floating objects, "log fishing" or around free swimming schools of fish, "school fishing". Yellowfin tuna caught by setting on dolphins have a higher average weight, approximately 45 pounds per fish, and are older in age. Fifty percent of the fish caught have already reached spawning maturity. Tuna caught by both log and school set techniques average roughly half the weight per fish as those harvested through encirclement, weighing approximately 10 pounds per fish for log sets, and 28 pounds per fish for school sets. The tuna caught using log and school set techniques are also younger, and less than 20 percent of the fish are at spawning maturity when caught according to IATTC data.

Setting on dolphins results in little bycatch or incidental harvest other than dolphins. In recent years, great improvements have been realized in yellowfin tuna purse seine fishing by releasing dolphins through the "back down" technique. While school and log fishing methods have almost no dolphin mortality, the bycatch of other species has become an issue of concern for the IATTC and some environmental conservation organizations. Recent peer review studies of IATTC data by the National Research Council indicate

that bycatch from these methods is much higher in terms of weight and includes a larger range of species other than marine mammals. This bycatch includes sharks, billfish, sea turtles, and a great number of immature yellowfin tuna. The loss of immature tuna is considered by IATTC researchers to be a potentially serious threat to the sustained recruitment of the tuna population. Additionally, compared to setting on dolphins, the average catch of yellowfin tuna per day is significantly less for log- and school-set caught tuna. Because the average weight per fish is lower, they are more difficult to process. The proportion of smaller (and less valuable) skipjack tuna in the catch is also greater, and the catch therefore typically brings a significantly lower price per pound.

#### THE INTERNATIONAL DOLPHIN CONSERVATION ACT OF 1992

On March 3, 1992, the Department of State and the Department of Commerce submitted to Congress a legislative proposal aimed at promoting international dolphin protection and resolving the Mexican challenge under GATT. A modified version of this legislation (P.L. 102-523) was adopted by the Congress and imposed an indefinite moratorium, lasting for a minimum of five-years, on the practice of setting on dolphins. In the interim before the effective date of the moratorium, tuna embargoes would be lifted for nations that committed to: (1) implementation of a moratorium; (2) observer coverage on all purse-seine vessels fishing in the ETP; and (3) significant annual reductions in dolphin mortality each year until the moratorium began. The legislation amended the MMPA further by: (1) revising the quotas applicable to the U.S. fleet; (2) modifying the American Tunaboat Association's general permit to proscribe setting on eastern spinner or coastal spotted dolphins; and (3) prohibiting (effective June 1, 1994) the sale, purchase, transport, or shipment in the United States of any tuna that is not dolphin-safe, in other words tuna caught by the practice of setting on dolphins. Although no other fishing nation has been willing to implement a moratorium, and certain provisions of the Act never went into effect, under the Act, only dolphin-safe tuna may now enter the United States. The ban on tuna that is not dolphin-safe in the U.S. market and the enactment of the South Pacific Tuna Treaty which accommodated many of the U.S. tuna fishermen displaced from the ETP, effectively ended the practice of setting on dolphins by the U.S. fleet in the ETP. In 1995 no sets on dolphins were made by the five U.S. vessels in the ETP fishery.

#### THE IATTC AND THE LA JOLLA AGREEMENT

On April 21-23, 1992, in La Jolla, California, representatives from a number of governments, including the United States, attended a meeting sponsored by the IATTC addressing dolphin mortality in the ETP. On June 18, 1992, the IATTC adopted a voluntary international agreement, the La Jolla agreement, establishing a multilateral program to reduce dolphin mortality in the ETP fishery to levels approaching zero. The governments in attendance were Costa Rica, Ecuador, Nicaragua, Panama, the United States, Vanuatu, and Venezuela, who are members in the IATTC, and Colombia, Mexico, and Spain who are not members of the IATTC. The new IATTC program contained the following elements: (1) limita-

tions on dolphin mortalities in the ETP yellowfin tuna purse-seine fishery, beginning with 19,500 annual mortalities in 1993, and diminishing each year to less than 5,000 annual mortalities by 1999, a number less than 0.1 percent of the estimated total dolphin population; (2) requirements that these limits be assigned on a per-vessel basis, termed a Dolphin Mortality Limit (DML), and that a vessel cease fishing when it reaches its annual dolphin quota; (3) observer coverage in all ETP tuna purse-seine vessels; (4) establishment of a review panel to monitor compliance; (5) establishment of an international research program on methods of reducing dolphin mortalities; and (6) establishment of a scientific advisory board to facilitate research.

The signatories have continued to operate under this agreement voluntarily. Some nations, such as Mexico, Venezuela, and Colombia have expressed concerns that their efforts to reduce dolphin mortality in the ETP yellowfin tuna purse-seine fishery under the La Jolla Agreement have not resulted in a lifting of the U.S. embargo against tuna caught by setting on dolphins. These nations have expressed a desire for changes in U.S. law which would allow tuna caught by setting on dolphins using improved fishing practices and gear to be imported into the U.S. market under international agreements between the United States and tuna harvesting nations. Foreign nations currently harvest over 95 percent of yellowfin tuna in the ETP.

#### STATUS OF THE U.S. TUNA FISHING FLEET IN THE ETP

In the mid-1970's the U.S. fleet consisted of more than 100 vessels and accounted for nearly 70 percent of the fishing capacity in the ETP. Since then, the fleet has steadily decreased due to foreign competition, increasing regulatory pressures, and other fishing opportunities in the western tropical Pacific. In 1995 the U.S. ETP tuna fleet consisted of five vessels; 95 foreign vessels fished the ETP during the same period. All observed dolphin mortalities for 1995 were due to foreign fishing operations.

In 1995, 81 vessels requested DML's, none of which were from the United States. Those U.S. vessels still fishing in the ETP use methods other than setting on dolphins. Much of the former U.S. fleet has either been sold or reflagged under Central or South American registries, or has moved to the southwestern tropical Pacific. Efforts were made to accommodate many of the U.S. tuna fishermen displaced from the ETP through the South Pacific Tuna Treaty. This treaty provides U.S. fishing vessels access to waters in the southwestern Pacific. Skipjack tuna is the most commonly harvested tuna in the southwestern tropical Pacific. Because dolphins and skipjack tuna do not typically associate in the southwestern Pacific, the tuna harvested by purse-seine vessels in the treaty area is considered dolphin-safe. Currently, the U.S. canned tuna market is served mainly from this skipjack tuna fishery.

#### THE PANAMA DECLARATION

In August 1995 several U.S. environmental organizations and six Latin American countries initiated efforts to strengthen the IATTC dolphin protection and monitoring program, and to improve access to the U.S. market for tuna caught by setting on dolphins using



“back-down” and other fishing gear and practices which minimize dolphin mortality. On October 4, 1995, that initiative, the “Declaration of Panama,” was signed by the twelve nations which fish for tuna in the ETP. The twelve signatory countries to the Panama Declaration include: Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States, Vanuatu and Venezuela. The Panama Declaration is a commitment to conclude, upon adoption of certain changes to U.S. domestic law, a binding agreement based on the provisions of the La Jolla Agreement with additional provisions to improve procedures for monitoring and enforcing efforts to reduce dolphin mortality.

Specifically, the Panama Declaration would: (1) establish a permanent annual dolphin mortality limit in the ETP at 5,000 dolphins, which would be reduced to a level approaching zero through the setting of annual limits, for all vessels conducting purse-seine fishing for tuna in the ETP; (2) set annual mortality limits for each of the dolphin stocks in the ETP; (3) shift current enforcement and monitoring requirements from a per trip basis to a per set basis; and (4) allow tuna harvested by setting on dolphins access to the U.S. market under a program administered by the IATTC. This program would permit setting on dolphins, under the same annual and per stock levels established under the La Jolla Agreement, require observer coverage onboard those vessels, and require that vessels cease setting on dolphins once that vessel reaches the annual or per stock dolphin mortality level assigned for that vessel.

Additionally, the signatories to the Panama Declaration agree to: (1) commit to long-term conservation and management measures for tuna stocks and other living marine resources in the ETP based on the best available scientific evidence; (2) commit to assess and reduce the bycatch of juvenile yellowfin tuna and other non-target species; (3) enhance reporting compliance; (4) enhance enforcement, data exchange, and monitoring systems to ensure compliance by signatory nations and the vessels flagged by these nations, including the use of mandatory observer coverage on all vessels; and (5) conduct a scientific assessment by 1998 to review progress toward meeting the objective of reducing dolphin mortality to 0.1 percent of the Minimum Estimated Abundance (NME) as established by the National Marine Fishery Service (NMFS); and (6) establish a system of incentives for vessel captains to continue to reduce dolphin mortality;

The Panama Declaration explicitly states that the adoption and implementation of the IDCP is contingent upon three changes to U.S. law: (1) lifting the current primary and secondary U.S. embargoes on harvesting and intermediary nations for yellowfin tuna from the ETP which is caught in compliance with the IDCP; (2) allowing U.S. market access to those nations harvesting tuna in the ETP in compliance with the IDCP, and which are, or have initiated steps to become members of the IATTC; and (3) changing the U.S. dolphin-safe labeling requirement so that dolphin-safe is defined as tuna caught in a set in which no dolphin mortality was observed and documented by observers, rather than the existing definition of dolphin-safe tuna as tuna caught by a method other than the encirclement of dolphins.

## LEGISLATIVE HISTORY

S. 1420 was introduced on November 17, 1995, by Senator Stevens. Senators Breaux, Chafee, Johnston, Murkowski, Moseley-Braun and Thurmond are cosponsors.

On April 25, 1996, a hearing on the bill was conducted by Senator Stevens, Chairman of the Subcommittee on Oceans and Fisheries. Senators Boxer, Biden and Chafee provided testimony along with representatives from the Department of State, the Department of Commerce, the IATTC, the Center for Marine Conservation, the Dolphin-Safe/Fair Trade Campaign and the Public Citizen/Citizen Trade Campaign.

On June 6, 1996, in open executive session, the Committee without objection, ordered S. 1420, reported with an amendment. The amendment offered by Senator Stevens includes the following: (1) several statements to the findings and purposes section of the bill that would recognize the role of the United States in dolphin conservation and reflect progress made in recent years; (2) a requirement that all nations meet their yearly dolphin mortality limits in order for them to import tuna into the U.S.; (3) a requirement that all nations participating in the fishery become members of the IATTC within six months of the enactment of the legislation, or their tuna could not be imported into the U.S.; (4) a requirement that the Secretary of Commerce (Secretary) establish guidelines for a domestic and international tracking and verification program to ensure appropriate labeling for dolphin-safe tuna; and (5) authorization of \$1.0 million to be used to study the effects of encirclement on dolphin populations.

Senators Hollings, Inouye, and Kerry raised several concerns during consideration of S. 1420. Specifically, concerns were raised regarding the definition of dolphin-safe tuna, the lifting of the embargo against tuna caught through setting on dolphins, whether tuna harvested which resulted in the serious injury of dolphins should be admitted to the U.S. market, and whether to allow canneries to display any dolphin-safe label other than the approved Federal "dolphin-safe" label mandated by S. 1420. Current law allows canneries to display alternative voluntary labels. The sponsors of the bill indicated a desire to address concerns raised by Senators Boxer and Biden concerning several provisions in S. 1420. A commitment was made to continue efforts to address concerns raised by members before the legislation is considered by the full Senate.

## SUMMARY OF MAJOR PROVISIONS

S. 1420, the International Dolphin Conservation Program Act, as reported, amends the Marine Mammal Protection Act, and makes other necessary changes to implement the agreements of the Panama Declaration. S. 1420 would: (1) lift existing embargoes on the harvest of yellowfin tuna by purse-seine vessels in the ETP caught in compliance with the IDCP; (2) allow tuna products to be labelled as dolphin-safe if there were no observed mortality of dolphins during the harvest of the tuna in that tuna product; (3) adopt the annual, per-stock, and per-vessel mortality limits established in the Panama Declaration; (4) allow U.S. fishermen to participate in the IDCP by providing the United States with a portion of the annual

quota, allowing setting on dolphins under IDCP procedures, and providing market access for tuna caught in compliance with the IDCP; (5) provide the Secretary emergency regulatory authority over U.S. fishermen to reduce the mortality and injury of dolphins; (6) authorize funding for research on (among other things) the effect of the encirclement on dolphins by purse seine nets, the status of dolphin stocks, and new cost-effective fishing methods which do not require setting on dolphins; (7) create a general advisory committee and scientific advisory committee to assist the U.S. delegates to the IDCP.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and Section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 18, 1996.*

Hon. LARRY PRESSLER,  
*Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1420, the International Dolphin Conservation Program Act.

Enacting S. 1420 could effect both direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1420.
2. Bill title: International Dolphin Conservation Program Act.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 6, 1996.
4. Bill purpose: S. 1420 would modify the protection of marine mammals, including dolphins, in connection with tuna harvesting. The bill would recognize and incorporate into law many of the provisions of the Declaration of Panama, signed October 4, 1995, by the United States and the governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, and Venezuela. The Declaration of Panama addresses the protection of dolphins and other species, and the conservation and management of tuna, in the eastern tropical Pacific Ocean (ETP). Several provisions of the bill would address the use of purse seines in tuna fishing. Purse seines are large nets that encircle tuna and are then drawn shut like a purse. Specifically, the bill would:

declare that it is U.S. policy to support that International Dolphin Conservation Program (IDCP) operated under the aus-

pices of the Inter-American Tropical Tuna Commission (IATTC);

eliminate the current ban by the Secretary of the Treasury on imports of yellowfin tuna from countries whose vessels catch tuna in the ETP using a procedure known as “setting on dolphins” by allowing tuna imports from those nations complying with the IDCP;

amend the Marine Mammal Protection Act of 1972 to allow the Department of Commerce (DOC) to issue permits to U.S. fishermen authorizing the incidental taking of dolphins during commercial yellowfin tuna harvesting;

limit the number of dolphins that can be killed by tuna fishing in the ETP to 5,000 annually, with the mortality limit apportioned among various dolphin types—but the limit for each type could not exceed 0.2 percent of the minimum estimated abundance of that type through calendar year 2000, and 0.1 percent of that minimum beginning with calendar year 2001 and thereafter;

require U.S. vessels fishing for tuna in the ETP to obtain individual, annual permits from the Secretary of Commerce to authorize their participation in the IDCP, as opposed to certificates of inclusion in one umbrella permit as under current law, and authorize the Secretary to charge a fee to cover the administrative costs of that permit which he could then spend without further appropriation;

authorize to be appropriated to the DOC \$1 million for scientific research on the effect of chase and encirclement on dolphin health and biology;

direct the Secretary to undertake or support additional research on improved fishing methods, purse seine fishing in the ETP, and the extent to which species other than mature yellowfin tuna are incidentally taken in the course of purse seine fishing for yellowfin tuna in the ETP; and

amend the Dolphin Protection Consumer Information Act by redefining tuna that may be labeled “Dolphin Safe” as that caught in any set of a purse seine net in which no dolphins were killed, regardless of whether any dolphins were encircled as part of the tuna harvest. Under the bill, tuna would be determined to be “dolphin safe” on a set by set basis, rather than by vessel-trip as under current law.

5. Estimated cost to the Federal Government: CBO estimates that implementing S. 1420 would cost about \$2 million in fiscal year 1998, and about \$6 million over the 1997–2002 period, assuming appropriations consistent with the bill’s provisions. In addition, CBO estimates that enacting S. 1420 could generate additional offsetting receipts from fees on fishing permits. We estimate that receipts from any new permit fees would total less than \$100,000 a year over the 1997–2002 period. The bill would give the Department of Commerce the authority to spend these receipts on program expenses without further appropriation. Therefore, we estimate the net effect on direct spending would be zero. Finally, based on information from the International Trade Commission (ITC), CBO estimates that S. 1420 would increase governmental receipts

by less than \$500,000 annually. The following table summarizes the estimated budgetary impact of S. 1420.

[By fiscal years, in millions of dollars]

	1997	1998	1999	2000	2001	2002
CHANGES IN SPENDING SUBJECT TO APPROPRIATIONS						
Estimated authorization level .....		2	1	1	1	1
Estimated outlays .....		2	1	1	1	1
CHANGES IN REVENUES						
Revenues						
Estimated revenues .....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Less than \$500,000.

The budgetary impact of this bill falls within budget function 300.

#### *Basis of estimate*

##### *Discretionary spending*

S. 1420 would specifically authorize the appropriation of \$1 million to be used by the DOC's National Marine Fisheries Service to support scientific research on the effect of chase and encirclement on dolphin health and biology. In addition, the bill would direct the Secretary of Commerce to undertake or support research in several areas including improved fishing methods, stock assessments of marine mammals, and the incidental taking of non-target species in the course of purse seine fishing in the ETP. Based on information from the DOC's National Marine Fisheries Service, CBO estimates that carrying out this research would cost about \$1 million per year, assuming appropriations of the estimated amounts. In total, we estimate outlays of about \$2 million in fiscal year 1998 and \$1 million a year thereafter, assuming appropriation of the necessary sums.

##### *Direct spending (including offsetting receipts)*

S. 1420 could affect direct spending, but CBO estimates that the net impact would be zero in each year. Enacting the bill could result in small amounts of new offsetting receipts and spending of those receipts, as explained below.

Under current law, all U.S. vessels fishing for tuna in the ETP may operate under one permit issued to the American Tunaboat Association in 1980 by the Secretary of Commerce. Individual vessels pay an annual fee to the DOC to renew certificates of inclusion under that permit. The current expires December 31, 1999. Over the last year, about five U.S. vessels have been harvesting tuna in the ETP under the permit.

Enacting S. 1420 would require U.S. vessels operating in the ETP to obtain individual permits from the Secretary of Commerce. Such permits would authorize vessels' participation in the IDCP and allow some incidental deaths of marine mammals from using purse seines in commercial fishing for yellowfin tuna. S. 1420 would authorize the Secretary to charge a permit fee, but such fees could not exceed the administrative costs of issuing permits. Income from fees could be spent by the Under Secretary of Commerce

for Oceans and Atmosphere for the expenses incurred in issuing permits.

Although enacting S. 1420 may not affect the fees paid per vessel, the bill could result in additional U.S. vessels seeking permit authority to operate in the ETP. Under current law, U.S. vessels in the ETP cannot set purse seine nets on dolphins in the course of fishing for tuna. The bill would permit this practice and allow for limited dolphin mortality in accordance with the international program as long as certain safeguards are adopted. This increase in flexibility could encourage additional U.S. vessels to operate in the ETP, where they would be subject to permit fees. We estimate, however, that any change in receipts from permit fees would total less than \$100,000 per year. As noted above, any increase in offsetting receipts would be matched by increased spending, for a net impact of zero in each year.

#### *Revenues*

Under current law, the Marine Mammal Protection Act of 1972 bans imports of yellowfin tuna from nations that fish for tuna in the eastern tropical Pacific Ocean. S. 1420 would eliminate the ban by allowing tuna imports from nations in compliance with the IDCP. Currently, fresh tuna imported to the U.S. is not subject to duty. However, the U.S. Customs Service collects about \$30 million annually from tariffs on canned tuna. Based on historical information provided by the ITC, prior to the current ban less than 2 percent of the duties collected on canned tuna imports were from IDCP signatory nations. Therefore, CBO estimates that eliminating the ban on imports of tuna from these nations would not significantly increase governmental receipts.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting S. 1420 could affect both direct spending and governmental receipts, but we estimate that there would be no net change in direct spending and that any change in governmental receipts would be less than \$500,000 a year. The estimated pay-as-you-go impact is summarized in the following table.

[By fiscal years, in millions of dollars]

	1996	1997	1998
Change in outlays .....	0	0	0
Change in receipts .....	0	0	0

7. Estimated impact on State, local, and tribal governments: The bill contains no intergovernmental mandates as defined by Public Law 104-4, and would not have a direct impact on the budgets of State, local, or tribal governments.

8. Estimated impact on the private sector: S. 1420 would impose private-sector mandates not exceeding the annual threshold, as defined in Public Law 104-4. Private-sector mandates in this bill include changes in labeling of dolphin-safe tuna because of the requirement that for tuna to be labeled dolphin-safe, no dolphin

deaths may occur. In addition, each tuna vessel in the ETP would be required to register for a dolphin mortality limit with the IATTC. U.S. tuna vessels fishing in the ETP would also be required to comply with tracking and verification procedures in order to separate dolphin-safe and dolphin-unsafe tuna. Based on information provided by the National Oceanic and Atmospheric Administration (NOAA) and representatives of the tuna industry, CBO estimates that these provisions would not substantially affect costs to the private sector.

Other provisions of the bill, such as requiring permits to be obtained from the Secretary of Commerce for the incidental taking of marine mammals and for gear requirements, codify existing NOAA regulations.

S. 1420 would lift the existing prohibition on U.S. vessels setting nets on dolphins in the ETP as long as vessels comply with all appropriate regulations. The bill also would lift the ban on the importation and sale of dolphin-unsafe tuna from countries participating in the International Conservation Program. Overall, CBO estimates that this bill would result in decreased costs to the private sector.

9. Previous CBO estimate: CBO prepared a cost estimate on May 22, 1996, for H.R. 2823, the International Dolphin Conservation Act, as ordered reported by the House Committee on Resources on May 8, 1996. Differences between the two estimates reflect variations in the bills' provisions regarding spending for dolphin conservation by the Department of Commerce and the Department of State. In addition, based on information from the DOC, CBO now estimates additional discretionary spending of about \$1 million per year to conduct the research required by both S. 1420 and H.R. 2823.

10. Estimate prepared by: Federal Cost Estimate: Victoria Heid and Gary Brown; Stephanie Weiner—for revenues. State and Local Government Impact: Pepper Santalucia. Private Sector Impact: Amy Downs.

11. Estimate approved by: Robert A. Sunshine (for Paul N. Van de Water, Assistant Director for Budget Analysis).

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

#### NUMBER OF PERSONS AFFECTED

The bill, as reported, would amend the MMPA to require new regulations to be developed governing the incidental take of marine mammals by U.S. vessels participating in the IDCP, and the establishment of a domestic tracking and verification program for the tracking of tuna products. While these changes may allow several additional U.S. vessels to participate in the ETP yellowfin tuna fishery, the number of persons affected by these provisions should not greatly exceed those currently engaged in this activity. The change in the dolphin-safe label may increase the participation of U.S. tuna canneries in the ETP fishery. Although these provisions

should not adversely affect those canneries currently engaged in the ETP fishery, it may have some impact on those canneries operating in the southwestern Pacific Ocean.

#### ECONOMIC IMPACT

The Department of Commerce will incur minor costs in fulfilling the Federal responsibilities under this legislation, including administration, vessel registration, monitoring procedures for U.S. vessels, and domestic tracking and verification programs for tuna from the ETP. Also, section 302 of the bill as reported, authorizes \$1.0 million for the Secretary to conduct a research project. This funding level is modest and is not expected to have an inflationary impact on the Nation's economy.

#### PRIVACY

S. 1420, as reported, will have no adverse impact on the personal privacy of the individuals or businesses affected.

#### PAPERWORK

This legislation would require the implementation of a tracking program for tuna products from their harvest from the ocean to the processing by the cannery. This program may require additional paperwork from both U.S. fishermen and canneries participating in the ETP fishery to comply with registration and tracking and verification provisions of the legislation, but it is envisioned that these requirements would not be burdensome in the amount of paperwork required.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title; references*

This section cites the short title of the reported bill as the "International Dolphin Conservation Program Act" and references all amendments, unless otherwise provided, to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

##### *Section 2. Purpose and findings*

This section would recognize that the purposes of S. 1420 International Dolphin Conservation Program Act are: (1) to enact the Declaration of Panama; (2) to recognize the significant reductions in dolphin mortality by nations fishing in the ETP; and, (3) to eliminate the ban on imports of tuna from those nations in compliance with the IDCP.

This section also would add the Congressional findings that: (1) nations that fish for tuna in the ETP have reduced dolphin mortality from hundreds of thousands per year to less than 5,000 annually; (2) the ban on tuna imports from the ETP served as an incentive to reduce dolphin mortality; (3) tuna canners and processors in the United States led the canning and processing industry in promoting a dolphin-safe tuna market; and (4) the signatory nations of the Declaration of Panama have agreed to reduce dolphin mortality in the ETP to 5,000 dolphin annually with a commitment to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits.



### *Section 3. Definitions*

This section would amend section 3 of the MMPA to add two new definitions, for the terms: “International Dolphin Conservation Program”, and “Declaration of Panama”.

The term “International Dolphin Conservation Program” would be defined to mean the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama. The term as defined would require: (1) that total annual dolphin mortality not exceed 5,000 annually, and that this mortality level be progressively reduced to a level approaching zero; (2) that per stock, per year mortality limits of dolphins be maintained at levels between 0.2 and 0.1 percent of the minimum population estimate through the calendar year 2000; (3) that per stock, per year dolphin mortality limits of dolphins be maintained at a level that would not exceed 0.1 percent of the minimum population estimate beginning with the calendar year 2001; (4) that if annual or per stock dolphin mortality limits are exceeded, setting on dolphins would cease for that year on that stock, or on mixed schools of that stock, as appropriate; (5) that a scientific review be conducted in 1998 to assess the progress in meeting dolphin mortality goals for the year 2000, and consider, as appropriate, recommendations to meet the goals; (6) that a scientific review and assessment be conducted to review stocks and provide appropriate recommendations to further reduce dolphin mortality; (7) the establishment of per vessel maximum dolphin mortality limits consistent with total and per stock mortality caps; and (8) the provision of a system of incentives for vessel captains to continue to reduce dolphin mortality. The Committee intends that the annual and per stock limits for dolphins in the ETP be reduced annually by a numerical value which considers the minimum population estimate of the dolphin stocks, as determined by the National Marine Fisheries Service. The Committee intends that these annual and per stock levels be determined by the International Dolphin Conservation Program in consultation with the IATTC.

The term “Declaration of Panama” would be defined to mean the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

### *Section 4. Amendments to title I*

Section 4 of the bill would amend Title I of the MMPA relating to the importation of yellowfin tuna from the ETP, permit requirements, and label requirements.

Subsection (a) would amend section 101(a)(2) of the MMPA to allow the Secretary to grant authorizations under title III of that Act for the taking of dolphins in the ETP subject to regulations under that title and not under section 103. Section 4 also would amend section 101(a)(2) by striking language which would require that incidental taking of marine mammals in the course of purse seine fishing in the ETP be reduced by the application of the best available practicable technology. Striking this language would require that the incidental taking of marine mammals in the ETP purse seine tuna fishery be reduced to a level approaching zero consistent with other commercial fisheries subject to the MMPA.

Subsection (b) of this section would amend section 101(a)(2)(B) of the MMPA by striking the existing language requiring documentary evidence from the government of the harvesting nation that it has adopted a regulatory program governing the incidental taking of marine mammals in its fishery comparable to that of the United States and that the average rate of incidental taking of marine mammals by that nation is comparable to the average rate of the United States. Subsection (b) would replace these requirements with new language requiring documentary evidence from the government of a harvesting nation that: (1) the tuna was not banned before the effective date of this Act; (2) the tuna was harvested by a nation which is a member of the IDCP, or has initiated and within six months completed, all steps necessary to become a member; (3) such nation is meeting all obligations of the IDCP and membership in the IATTC, including all financial obligations; and (4) the total dolphin mortality limits per year, and per stock per year mortality levels for that nation's vessels do not exceed those levels as determined by the IDCP annually, including the goal of eliminating dolphin mortality. Section 101(a)(2)(B) would be amended further to mandate that the Secretary not accept such documentary evidence if: (1) the government of the harvesting nation does not provide directly or authorize the IATTC to release complete and accurate information to determine if that nation is in compliance with the IDCP or for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary, or if the Secretary, in consultation with the Secretary of State, finds that there is sufficient information to suggest that a harvesting nation is consistently failing to take appropriate enforcement actions or is otherwise not in compliance with the IDCP.

Subsection (c) of this section would amend section 101 of the MMPA by adding a new subsection (d) mandating that the provisions of the MMPA shall not apply to United States citizens who incidentally take any marine mammal during fishing operations while employed on foreign vessels outside the United States economic exclusive zone (EEZ) as defined by the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), if that vessel is in compliance with the IDCP.

Subsection (d) of this section would amend section 104(h) of the MMPA by striking existing language regarding the general permit issued to the American Tunaboat Association and the conditions for the permit, as well as by striking existing language prescribing regulations for backdown procedures, experimental fishing operations, a system of performance standards, explosive control devices, and observer coverage, and would replace these with new provisions requiring an annual permit for U.S. vessels and specifying that U.S. vessels are governed by section 304 of the MMPA and subject to the regulations of section 302. Provisions relating to backdown procedures, explosive devices, and observer coverage would be contained in section 302 under the amendments of this bill.

Subsection (e) of this section would amend section 108(a)(2) of the MMPA to require the Secretary, through the Secretary of State, to initiate: (1) negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission to incorporate provisions agreed to in the Declaration of Panama and in

the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, and to revise the schedule of annual contributions to the IATTC budget to provide for more equitable contributions among members; and (2) discussions among IDCP participants, or likely participants, to identify funding sources for dolphin research and conservation measures.

Subsection (f) of this section would amend section 110(a) of the MMPA to eliminate the authorization for a study on alternative fishing methods for yellowfin tuna in the ETP which has been completed.

Subsection (g) of this section would amend subsection (d)(1) of the Dolphin Protection Consumer Information Act to make it a violation of section 5 of the Federal Trade Commission Act to label any tuna harvested outside the ETP as dolphin-safe if the harvesting methods or the tuna harvested do not fulfill the requirements of the IDCP.

Subsection (h) of this section would amend subsection (d)(2) of the Dolphin Protection Consumer Information Act so that tuna harvested in the ETP by a vessel using purse seine nets would be considered dolphin-safe if certain criteria are met. Consistent with existing law, tuna caught from a vessel that meets size requirements which the Secretary determines, consistent with the IDCP, make that vessel incapable of encircling dolphins would be dolphin-safe. Subsection (h) would strike the existing requirement that tuna products be accompanied by a written statement by the captain of the vessel that no tuna were caught on the trip in which the tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins. Instead, the provision would be amended to state that the tuna product would be required to be accompanied by a written statement by the vessel captain certifying that no dolphins were killed during the sets in which the tuna was caught. The existing requirement that the tuna product be accompanied by a written statement by the Secretary or his designee, or an IATTC representative, would be amended to include an authorized representative of a participating nation which meets IDCP requirements. The written statement would be required to state that an observer approved by the IDCP was on board the vessel during the entire trip; however, the existing provision that the observer document that purse seine nets were not intentionally deployed during the trip on or to encircle dolphin is stricken and replaced with language stating that the observer documented that no dolphins were killed during the sets in which the tuna was harvested. Subsection (h) further amends this section by requiring: (1) the tuna product meeting the requirements of the conditions mentioned above to be endorsed by each exporter, importer, and processor of the product; and (2) that all written statements and endorsements provided comply with regulations promulgated by the Secretary. These requirements create a certification process that is intended to ensure that throughout the harvest, transshipment, processing, export, import, and sale or barter of yellowfin tuna harvested in the ETP that dolphin-safe tuna is appropriately labeled, marketed and sold.

Subsection (i) of this section also would amend subsection (d) of the Dolphin Protection Consumer Information Act to clarify that tuna harvested outside the ETP by a vessel using purse seine nets

is dolphin-safe if: (1) it is accompanied by a written statement by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage when the tuna was harvested; and (2) in any fishery where the Secretary finds a regular and significant association between marine mammals and tuna, that an observer on board the vessel certifies that no purse seine nets were deployed on or used to encircle dolphins. Subsection (i) would amend subsection (d) of the Dolphin Protection Consumer Information Act further to mandate that no tuna can be labelled with any label, reference, or other indication containing dolphins, porpoises, or marine mammals as dolphin-safe except as provided for in subsection (d) of the Dolphin Protection Consumer Information Act.

Subsection (j) of this section would amend subsection (f) of the Dolphin Protection Consumer Information Act to require the Secretary, in consultation with the Secretary of the Treasury, to issue regulations implementing the new labelling requirements within 3 months of the enactment of the International Dolphin Conservation Program Act. These regulations would establish a domestic tracking and verification procedure for the tracking of tuna labeled as dolphin-safe. The confidentiality of proprietary information submitted would be ensured by the Secretary. These regulations would include provisions to address: (1) weight calculation; (2) additional measures, if necessary, to enhance current observer coverage and training; (3) the designation of well location, including procedures for sealing holds to ensure the appropriate segregation of dolphin-safe tuna and tuna not defined as dolphin-safe; (4) above and below deck monitoring procedures; (5) the reporting, receipt, and database storage of radio and facsimile data from fishing vessels; (6) shore-based verification and tracking procedures throughout the fishing operation, transshipment of the tuna, and canning process by means of IATTC trip records or otherwise; (7) the use of periodic audits and spot checks for caught, landed, and processed tuna labeled as dolphin-safe; and (8) timely access to data required for these verification and tracking procedures from harvesting nations so that periodic audits and spot checks of tuna and tuna product may be carried out by the Secretary. The Secretary would be allowed to make adjustments to these regulations as necessary to meet the requirements of any future international tracking and verification program that meets or exceeds the minimum requirements for the domestic program established under this subsection.

### *Section 5. Amendments to title III*

Section 5 of the bill as reported would amend Title III of the MMPA by changing the existing title heading, Global Moratorium to Prohibit Certain Tuna Harvesting Practices, to "TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM." This section would establish the regulations, procedures, research, review, and permitting requirements needed to implement the IDCP.

Subsection (b) of this section would amend section 301(a)(4) of the MMPA by striking an existing finding relating to the willingness of yellowfin harvesting nations to participate in a multilateral agreement to eventually eliminate dolphin mortality, and replacing

it with the new finding recognizing that yellowfin harvesting nations have demonstrated a willingness to participate in the IDCP.

Subsection (b) also would amend section 301(b) of the MMPA by striking the existing policy statement relating to securing multilateral agreements to reduce dolphin mortality, and replacing it with a statement that it is the policy of the United States to support the IDCP and its programs to reduce and eliminate dolphin mortality. Subsection (b) also would replace the policy statement of ensuring that the U.S. market does not act as an incentive for tuna harvested by setting on dolphins, or with driftnets, and replacing it with a statement that it is U.S. policy to ensure that the U.S. market does not act as an incentive for the harvest of tuna caught by driftnets or purse seine nets in the ETP not operating in compliance with the IDCP. This recognition would ensure that the existing trend that the existing trend of reduced mortality continues, that individual dolphin stocks are protected, and the goal to eliminate all dolphin mortality continues to be a priority.

Subsection (c) would amend section 302 of the MMPA by replacing the existing language in subsections (a), (b), and (c), concerning the authority provided to the Secretary of State to enter into international agreements to establish a global moratorium, the terms of establishing the agreement, and the terms of U.S. compliance with the moratorium, and replacing these subsections with new language to: (1) require the Secretary of Commerce to issue regulations to implement the IDCP and to consult with the Secretary of State, the Marine Mammal Commission, and U.S. Commissioners to the IATTC in developing regulations; and (2) establish emergency regulations. Subsection (c) also would add a new subsection (d) on research to further the goals of the IDCP.

Subsection (c) would amend section 302(a) of the MMPA by striking the existing language authorizing the Secretary of State in consultation with the Secretary of Commerce to enter into agreements to establish a moratorium on setting on dolphins for a period of at least five years, and replacing it with new language to authorize the Secretary to issue regulations required to implement the IDCP. Not later than three months after the enactment of the IDCP, the Secretary would issue regulations to authorize and govern the incidental taking of marine mammals in the ETP by U.S. vessels participating in the IDCP, including species designated as depleted under the MMPA, but not listed as endangered or threatened under the Endangered Species Act. Regulations issued by the Secretary to implement the IDCP would: (1) require observers aboard each vessel; (2) require the use of “back down” or other appropriate techniques; (3) prohibit intentional sets on stocks of dolphin according to IDCP regulations; (4) require the use of special equipment such as dolphin-safety panels in nets, monitoring devices to detect sets with potentially high dolphin mortality, operable rafts, operable floodlights, and other devices; (5) ensure that the backdown procedure is completed, and that the rolling of the net to sack up begins no later than 30 minutes after sundown; (6) ban the use of explosive devices in all purse seine operations; (7) establish per vessel, total, and per stock annual mortality limits in accordance with the IDCP; (8) prevent intentional sets on dolphins after reaching per vessel, total, or per stock annual mortality limits; (9) pre-

vent the setting on dolphins without an assigned vessel dolphin mortality limit; (10) allow experimental fishing methods to test improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or encirclement; and (11) other such restrictions and requirements as the Secretary deems necessary to implement the IDCP for U.S. vessels. The Secretary would be authorized to make any necessary adjustments to the requirements for fishing gear, vessel equipment, and fishing practices provided that those adjustments are consistent with the IDCP.

Subsection (b) of this section would amend section 302(b) by striking the existing language describing the terms of the agreement for a moratorium, and replacing it with new language mandating that the Secretary of Commerce consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the IATTC in developing any regulations for section 302 of the MMPA as amended by this Act.

Section 302(c) of the MMPA would be amended by this subsection by striking the existing language concerning the procedures for termination of the U.S. moratorium, and replacing it with new language mandating that in the event the Secretary determines, based on the best available scientific information, that the incidental mortality and serious injury of marine mammals authorized under this Act, has, or is likely to have, a significant adverse effect on a marine mammal stock or species, then the Secretary must: (1) notify the IATTC of these findings, along with recommendations to reduce and mitigate this incidental mortality and serious injury; and (2) prescribe emergency regulations to reduce incidental mortality or serious injury. Before taking these actions, the Secretary would be required to consult with the Secretary of State, the Marine Mammal Commission, and U.S. Commissioners to the IATTC. Emergency regulations prescribed: (1) would be published in the Federal Register; (2) would remain in effect for the duration of the applicable fishing year; and (3) could be terminated by the Secretary at an earlier date by publication in the Federal Register if the Secretary determines that the reasons for the emergency action no longer exist. The Secretary would be authorized to extend these emergency regulations for additional periods, if the Secretary finds that the incidental mortality or serious injury is continuing to have a significant adverse effect on a stock or species.

Finally, subsection (b) of this section would amend section 302 of the MMPA by adding a new subsection (d) on research. This new subsection (d) would require the Secretary, in cooperation with those nations participating in the IDCP and the IATTC, to undertake or support scientific research to further the goals of the IDCP. This would include: (1) devising cost-effective fishing methods and gear to reduce, and with the goal of eliminating, the incidental mortality and serious injury of marine mammals in the ETP purse-seine tuna fishery; (2) developing cost-effective methods of fishing on mature yellowfin tuna without setting on dolphins or other marine mammals; (3) carrying out stock assessments for marine mammals taken in the ETP, including those not taken within waters under the jurisdiction of the United States; (4) studying the effect of chase and encirclement on the health and biology of dolphin and dolphin populations in the ETP; and (5) determining the extent, lo-

cation, and effect of the incidental take of nontarget species, including juvenile tuna, occurring in the ETP due to purse seine fishing for yellowfin tuna stocks. The Committee intends that the funding for the marine mammal stock assessment called for in this section would come from funds authorized in section 306 of the MMPA, as it would be redesignated by this Act, along with the current funding for research on alternative fishing methods and gear for yellowfin tuna, and research on dolphins in the ETP.

This subsection also would authorize \$1.0 million to be used by the Secretary, acting through the National Marine Fishery Service, to carry out a study on the effects of chase and encirclement on dolphins. Upon the completion of the study, the Secretary must submit the findings of the study and recommendations to Congress, and to the IATTC. This study also would include a description of the annual results of research conducted under section 303 of this Act.

Section 5(d) would repeal existing section 303 of the MMPA which currently requires the establishment of an international research program in conjunction with the international agreement suggested in existing section 302. This research program would become moot and be replaced by the research activities under the IDCP. The repeal of section 303 also eliminates the dolphin mortality limits and funding conditions required to be included in the international research program. Research activities repealed in section 303 are now included in section 302 of the MMPA as amended by this Act.

Section 5(e) would amend existing section 304 and redesignate it as section 303. The new section 303 would continue to require an annual report by the Secretary, but would amend the requirements of the report to track more closely the changes made through the implementation of the IDCP.

Section 5(f) would repeal existing section 305 of the MMPA, which addresses the application of the existing ban on imports of yellowfin tuna or yellowfin tuna products that are not considered to be dolphin-safe. This existing section requires periodic reviews for compliance, and notification if a country is not compliance, and addresses the types of products to be banned, the duration of import bans, and other related matters for those countries not in compliance. Section 4(h) of this Act, addressed above, would add provisions to subsection (d) of the Dolphin Protection Consumer Information Act to replace these existing import ban measures with measures providing for conformance with the IDCP.

Section 5(g) would amend existing section 306, which establishes the conditions for the general permit issued to the American Tuna-boat Association, and would redesignate this section as section 304. The existing language: (1) limited dolphin mortality to a specified schedule; (2) prohibited encircling any school of dolphins in which any Eastern Spinner Dolphin or Coastal Spotted Dolphin is observed; (3) set the expiration date of the permit; (4) defined a major purse-seine tuna fishing country.

The new section 304 would revise the permitting process to allow the taking of marine mammals for U.S. vessels participating in the IDCP. These permits would be administered in accordance with the regulations set forth in section 302 of the MMPA as amended by

this Act. The Secretary would prescribe the necessary procedures needed to issue permits, including, the submission of: (1) the name and identification number of each vessel, and owner address and other information; and (2) information on the tonnage, hold capacity, speed, processing equipment, gear, and other equipment for each vessel required under 302, as amended by this Act. The Secretary is authorized to charge a fee for these permits not to exceed the administrative costs in granting the permit. All U.S. vessels would be required to obtain a permit to operate in the purse seine tuna fishery in the ETP after the effective date of the IDCP. The Secretary would have the authority to sanction permits for U.S. vessels in any case in which: (1) a vessel, owner, operator, or any other person to whom a permit is issued, commits a prohibited act, or uses that permit to commit a prohibited act, as described in section 305 of the MMPA as amended by this Act; and (2) any civil penalty or criminal fine imposed on a vessel, owner, operator, or other person to whom a permit has been applied or issued, has not been paid or is overdue. In these cases the Secretary may: (1) revoke the permit; (2) suspend the permit for a period of time; (3) deny a permit; or (4) impose additional conditions or restrictions on any permit when necessary. The Secretary would be required to take into account the nature, circumstances, extent, and gravity of the prohibited act, and the degree of culpability, and any prior history of offenses of the violator in revoking or limiting a permit. The transfer of ownership of a vessel would not extinguish any permit sanction in effect, and would require the owner to make that information available to any transferee. The Secretary would reinstate a permit assessed for failure to pay a civil penalty or criminal fine once that fine is paid. No permit sanctions could be imposed until there had been a hearing on the facts, either in conjunction with a civil penalty proceeding under title III of the MMPA, or otherwise.

Section 5(h) of the bill as reported would amend section 307 concerning prohibited acts and redesignate it as section 305.

Section 5(h) would strike paragraphs (1), (2), and (3) of section 305(a) as amended by this Act and would insert new language. The previous language prohibited: (1) the sale, purchase, or transfer of any tuna or tuna product that is not dolphin-safe as defined in current law; (2) any U.S. vessel from setting on dolphins unless expressly provided a permit or for scientific research under the auspices of the IATTC; (3) for any person to import any tuna currently banned; and (4) for any person to interfere with enforcement measures. The new language would make it a prohibited act for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna product unless that tuna or tuna product is either dolphin-safe, or is harvested in compliance with the IDCP by a country that is a member of the IATTC, or has initiated steps to become a member of the IATTC. The Committee feels that any nation which is fulfilling all of the steps necessary to be a member of the IATTC, including financial obligations, but is not a member of the IDCP or the IATTC, should not be prohibited from the U.S. market as long as they are fulfilling the obligations of the IDCP and IATTC. It also would be a prohibited act for any person or vessel subject to the jurisdiction of the United States to encircle any



marine mammal during tuna fishing in the ETP not in accordance with the IDCP and the regulations issued under title III as amended by this Act. The new language would prohibit the importation of yellowfin tuna or tuna product or any other fish or fish product in violation of a ban under section 101(a)(2) as amended by this Act.

Section 5 of the bill as reported would make technical and clerical amendments to section 306 as redesignated by this Act, and to the table of contents of the MMPA.

*Section 6. Amendments to the Tuna Conventions Act*

Section 6 of the bill as introduced would amend the Tuna Conventions Act of 1950 (16 U.S.C. 951 et seq) to incorporate changes in the advisory committee and the scientific subcommittee.

Section 6 of the bill as reported would amend section 3(c) of the Tuna Conventions Act to replace the officer of the United States Fish and Wildlife Service as one of the four United States Commissioners to the Tuna Conventions Act with either the Director, or appropriate regional director of the National Marine Fishery Service (NMFS).

Section 6 of the bill as reported would amend section 4(a) of the Tuna Conventions Act to require the Secretary to: (1) appoint a General Advisory Committee composed of five to 15 persons with balanced representation from the groups participating in the fisheries covered by the Tuna Commissions Act, and from nongovernmental conservation organizations; (2) appoint a Scientific Advisory Subcommittee composed of five to 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations; (3) establish procedures to provide for public participation and confidentiality of business data; and (4) determine the terms of office for members of the General Advisory Committee and Scientific Advisory Subcommittee. These members would not receive compensation for their services.

Section 6 of the bill as reported would amend section 3 of the Tuna Conventions Act to define the functions of the General Advisory Committee and the Scientific Advisory Subcommittee. The General Advisory Committee would be invited to have representatives attend all nonexecutive meetings of the U.S. sections and would be given opportunity to examine and comment on any proposed investigations, reports, or regulations of the Tuna Commission. The Scientific Advisory Subcommittee would advise the General Advisory Committee and the Commissioners to the IATTC on matters including: (1) the conservation of ecosystems; (2) the sustainable uses of living marine resources related to the tuna fishery in the ETP; and (3) the long-term conservation and management of living marine resources in the ETP. The Scientific Advisory Subcommittee also would perform functions and provide assistance, as directed by the General Advisory Committee, the United States Commissioners to the IATTC, or the Secretary. These functions could include: (1) reviewing IDCP and IATTC data; (2) recommending research needs; (3) recommendations for scientific reviews and assessment required under the Act; (4) consulting with other experts as needed; and, (5) recommending measures to assure the

regular and timely full exchange of data among parties to the IDCP and among each nation's National Scientific Advisory Committee (or its equivalent). The Scientific Advisory Subcommittee would be permitted to attend the same meetings as the General Advisory Committee, as well as IATTC meetings within the rules of the IATTC, and be given full opportunity to review and comment on scientific matters.

*Section 7. Effective date*

Section 7 of the bill as reported provides that sections 3 through 6 of the Act would become effective upon certification by the Secretary of State to Congress that a binding resolution of the IATTC or other legal instrument establishing the IDCP had been adopted and was in effect.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 16. CONSERVATION

CHAPTER 16. TUNA CONVENTIONS

**§ 952. Commissioners; number, appointment, and qualification**

The United States shall be represented on the two commissions by a total of not more than four United States Commissioners, who shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners. Of such Commissioners—

(a) not more than one shall be a person residing elsewhere than in a State whose vessels maintain a substantial fishery in the areas of the conventions;

(b) at least one of the Commissioners who are such legal residents shall be a person chosen from the public at large, and who is not a salaried employee of a State or of the Federal Government;

[(c) at least one shall be an officer of the United States Fish and Wildlife Service; and]

*(c) at least one shall be either the Director, or an appropriate regional director, of the National Marine Fisheries Service; and*

(d) at least one shall be chosen from a nongovernmental conservation organization.

**§ 953. Advisory Committee; composition; appointment; compensation; duties**

[The United States Commissioners shall (a) appoint an advisory committee which shall be composed of not less than five nor more than fifteen persons who shall be selected from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations, and (b) shall fix

the terms of office of the members of such committee, who shall receive no compensation for their services as such members. The advisory committee shall be invited to attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the commissions. The advisory committee may attend all meetings of the international commissions to which they are invited by such commissions.】

**SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.**

(a) *APPOINTMENTS; PUBLIC PARTICIPATION; COMPENSATION.*—*The Secretary, in consultation with the United States Commissioners, shall—*

(1) *appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from non-governmental conservation organizations;*

(2) *appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations;*

(3) *establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data; and*

(4) *fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.*

(b) *FUNCTIONS.*—

(1) *GENERAL ADVISORY COMMITTEE.*—*The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the Commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.*

(2) *SCIENTIFIC ADVISORY SUBCOMMITTEE.*—

(A) *ADVICE.*—*The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including—*

(i) *the conservation of ecosystems;*

(ii) *the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and*

(iii) *the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.*

(B) *OTHER FUNCTIONS AND ASSISTANCE.*—*The Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners, or*

*the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include—*

*(i) the review of data from the Program, including data received from the Inter-American Tropical Tuna Commission;*

*(ii) recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research;*

*(iii) recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments;*

*(iv) consulting with other experts as needed; and*

*(v) recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or its equivalent).*

*(3) ATTENDANCE AT MEETINGS.—The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.*

## **§ 1362. Definitions**

For the purposes of this Act—

(1) The term “depletion” or “depleted” means any case in which—

(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act [16 U.S.C. 1401 et seq.], determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 109 [16 U.S.C. 1379], determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973.

(2) The terms “conservation” and “management” mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals

within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(3) The term “district court of the United States” includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term “humane” in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

(5) The term “intermediary nation” means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B) [16 U.S.C. 1371(a)(2)(B)].

(6) The term “marine mammal” means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this Act, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(7) The term “marine mammal product” means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(8) The term “moratorium” means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this Act.

(9) The term “optimum sustainable population” means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

(10) The term “person” includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(11) The term “population stock” or “stock” means a group of marine mammals of the same species of smaller taxa in a common spatial arrangement, that interbreed when mature.

(12)(A) Except as provided in subparagraph (B), the term “Secretary” means—

(i) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this Act with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(ii) the Secretary of the Interior as to all responsibility, authority, funding, and duties under this Act with respect to all other marine mammals covered by this Act.

(B) [In] in section 118 and title IV [16 U.S.C. 1387, 1421 et seq.] the term “Secretary” means the Secretary of Commerce.

(13) The term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(14) The term “United States” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.

(15) The term “waters under the jurisdiction of the United States” means—

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

(16) The term “fishery” means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(17) The term “competent regional organization”

(A) for the tuna fishery in the eastern tropical Pacific Ocean, means the Inter-American Tropical Tuna Commission; and

(B) in any other case, means an organization consisting of those nations participating in a tuna fishery, the purpose of which is the conservation and management of that fishery and the management of issues relating to that fishery.

(18)(A) The term “harassment” means any act of pursuit, torment, or annoyance which—

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) The term “Level A harassment” means harassment described in subparagraph (A)(i).

(C) The term “Level B harassment” means harassment described in subparagraph (A)(ii).

(19) The term “strategic stock” means a marine mammal stock—

(A) for which the level of direct human-caused mortality exceeds the potential biological removal level;

(B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future; or

(C) which is listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or is designated as depleted under this Act.

(20) The term “potential biological removal level” means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(A) The minimum population estimate of the stock.

(B) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size.

(C) A recovery factor of between 0.1 and 1.0.

(21) The term “Regional Fishery Management Council” means a Regional Fishery Management Council established under section 302 of the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1852].

(22) The term “bona fide research” means scientific research on marine mammals, the results of which—

(A) likely would be accepted for publication in a referred scientific journal;

(B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or

(C) are likely to identify, evaluate, or resolve conservation problems.

(23) The term “Alaska Native organization” means a group designated by law or formally chartered which represents or consists of Indians, Aleuts, or Eskimos residing in Alaska.

(24) The term “take reduction plan” means a plan developed under section 118 [16 U.S.C. 1387].

(25) The term “take reduction team” means a team established under section 118 [16 U.S.C. 1387].

(26) The term “net productivity rate” means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

(27) The term “minimum population estimate” means an estimate of the number of animals in a stock that—

(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information;

(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.

(28) *The term “International Dolphin Conservation Program” means the international program established by the agreement signed in La Jolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama, that requires—*

*(A)(i) that the total annual dolphin mortality in the purse seine fishery for yellow fin tuna in the eastern tropical Pacific Ocean be limited to 5,000; and*

*(ii) a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;*

*(B) the establishment of a per stock per year mortality limit of dolphin at a level between 0.2 percent and 0.1 percent of the minimum population estimate to be in effect through calendar year 2000;*

*(C) the establishment of a per stock per year mortality limit of dolphin at a level less than or equal to 0.1 percent of the minimum population estimate beginning with the calendar year 2001;*

*(D) that if a mortality limit is exceeded under—*

*(i) subparagraph (A), all sets on dolphins shall cease for the applicable fishing year; and*

*(ii) subparagraph (B) or (C), all sets on the stocks covered under subparagraph (B) or (C) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;*

*(E) a scientific review and assessment to be conducted in calendar year 1998 to—*

*(i) assess progress in meeting the objectives set for calendar year 2000 under subparagraph (B); and*

*(ii) as appropriate, consider recommendations for meeting these objectives;*

*(F) a scientific review and assessment to be conducted—*

*(i) to review the stocks covered under subparagraph (C); and*

*(ii) as appropriate to consider recommendations to further the objectives set under that subparagraph;*

*(G) the establishment of a per vessel maximum annual dolphin mortality limit consistent with the applicable per year mortality caps, as determined under subparagraphs (A) through (C); and*

*(H) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.*



(29) *The term "Declaration of Panama" means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.*

**§ 1371. Moratorium on taking and importing marine mammals and marine mammal products**

(a) IMPOSITION; EXCEPTIONS.—There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Consistent with the provisions of section 104 [16 U.S.C. 1374], permits may be issued by the Secretary for taking, and importation for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 104(c)(5) [16 U.S.C. 1374(c)(5)], may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II [16 U.S.C. 1401 et seq.]. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 104(c)(5) [16 U.S.C. 1374(c)(5)], which is consistent with the purposes and policies of section 2 of this Act [16 U.S.C. 1361]. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 [16 U.S.C. 1374] subject to regulations prescribed by the Secretary in accordance with section 103 [16 U.S.C. 1373], or in lieu of such permits, authorizations may be granted therefor under section 118 [16 U.S.C. 1387], subject to regulations prescribed under that section by the Secretary without regard to section [103 [16 U.S.C. 1373]] 103, and authorizations may be granted under title III with respect to the yellowfin tuna fishery of the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable.] rate. The

Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

[(B) in the case of yellowfin tuna harvested with purse seines in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

[(i) the government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to that of the United States; and

[(ii) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of marine mammals by United States vessels in the course of such harvesting, except that the Secretary shall not find that the regulatory program, or the average rate of incidental taking by vessels, of a harvesting nation is comparable to that of the United States for purposes of clause (i) or (ii) of this paragraph unless—

[(I) the regulatory program of the harvesting nation includes, by no later than the beginning of the 1990 fishing season, such prohibitions against encircling pure schools of species of marine mammals, conducting sundown sets, and other activities as are made applicable to United States vessels;

[(II) the average rate of the incidental taking by vessels of the harvesting nation is no more than 2.0 times that of United States vessels during the same period by the end of the 1989 fishing season and no more than 1.25 times that of United States vessels during the same period by the end of the 1990 fishing season and thereafter;

[(III) the total number of eastern spinner dolphin (*Stenella longirostris*) incidentally taken by vessels of the harvesting nation during the 1989 and subsequent fishing seasons does not exceed 15 percent of the total number of all marine mammals incidentally taken by such vessels in such year and the total number of coastal spotted dolphin (*Stenella attenuata*) incidentally taken by such vessels in such seasons does not exceed 2

percent of the total number of all marine mammals incidentally taken by such vessels in such year;

[(IV) the rate of incidental taking of marine mammals by the vessels of the harvesting nation during the 1989 and subsequent fishing seasons is monitored by the porpoise mortality observer program of the Inter-American Tropical Tuna Commission or an equivalent international program in which the United States participates and is based upon observer coverage that is equal to that achieved for United States vessels during the same period, except that the Secretary may approve an alternative observer program if the Secretary determines, no less than sixty days after publication in the Federal Register of the Secretary's proposal and reasons therefor, that such an alternative observer program will provide sufficiently reliable documentary evidence of the average rate of incidental taking by a harvesting nation; and

[(V) the harvesting nation complies with all reasonable requests by the Secretary for cooperation in carrying out the scientific research program required by section 104(h)(3) of this title [16 U.S.C. 1374(h)(3)];]

*(B) In the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—*

*“(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of the International Dolphin Conservation Program Act; or*

*“(II) the tuna or products therefrom were harvested after the effective date of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission necessary, to become a member of that organization;*

*“(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and*

*“(iii) the total dolphin mortality limits, and per stock per year mortality limits permitted for that nation's vessels under the International Dolphin Conservation*

*Program do not exceed those levels determined for 1996, or in any year thereafter, consistent with requirements of the International Dolphin Conservation Program, including the goal of eliminating dolphin mortality, except that the Secretary shall not accept such documentary evidence if—*

*“(I) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner to allow determination of compliance with the International Dolphin Conservation Program;*

*“(II) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or*

*“(III) after taking into consideration this information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.”.*

(C) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(D) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as such ban is in effect; and

(E)(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South

Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993, and

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (E), the term “driftnet” has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term “driftnet” does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title [16 U.S.C. 1372—1374, and 1381] permitting and governing such taking and importing, in accordance with such determinations: Provided, however, That the Secretary, in making such determinations, must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this Act: Provided further, however, That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock as provided for in paragraph (1) of this subsection, or as provided for under paragraph (5) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)(A) Except as provided in subparagraphs (B) and (C), the provisions of this Act shall not apply to the use of measures—

- (i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;
- (ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;
- (iii) by any person, to deter a marine mammal from endangering personal safety; or
- (iv) by a government employee, to deter a marine mammal from damaging public property,

so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973, the Secretary shall recommend specific measures which may be used to non-lethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this Act.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this Act.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this Act.

(5)(A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

- (i) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) [16 U.S.C. 1379(f)] or, in the case of a cooperative agreement under both this Act and the Whaling Convention Act of 1949 (16 U.S.C. 916 et seq.), pursuant to section 112(c); and
- (ii) prescribes regulations setting forth—

- (I) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its

habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses; and

(II) requirements pertaining to the monitoring and reporting of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 103 and 104 [16 U.S.C. 1373, 1374] shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b), or section 109(f) [16 U.S.C. 1379(f)] or pursuant to a cooperative agreement under section 119 [16 U.S.C. 1388].

(ii) The authorization for such activity shall prescribe, where applicable—

(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursu-

ant to subsection (b) or section 109(f) [16 U.S.C. 1379(f)] or pursuant to a cooperative agreement under section 119 [16 U.S.C. 1388],

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) [16 U.S.C. 1379(f)] or pursuant to a cooperative agreement under section 119 [16 U.S.C. 1388], and

(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) [16 U.S.C. 1379(f)] or pursuant to a cooperative agreement under section 119 [16 U.S.C. 1388].

(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this Act for taking by harassment that occurs in compliance with such authorization.

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and



(III) where required under section 118 [16 U.S.C. 1387], a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 118 [16 U.S.C. 1387], shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 118 [16 U.S.C. 1387] shall not be subject to the penalties of this Act for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 118 [16 U.S.C. 1387].

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 118 [16 U.S.C. 1387] to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 103 and 104 [16 U.S.C. 1373, 1374] shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).

(6)(A) A marine mammal product may be imported into the United States if the product—

(i) was legally possessed and exported by any citizen of the United States in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term—

(i) “Native inhabitant of Russia, Canada, or Greenland” means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

(ii) “cultural exchange” means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

(b) EXEMPTIONS FOR ALASKAN NATIVES.—Except as provided in section 109 [16 U.S.C. 1379], the provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) is for subsistence purposes; or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: *Provided*, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: *And provided further*, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 of this title [16 U.S.C.

1373] and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared. In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 117(b)(2) [16 U.S.C. 1386(b)(2)], or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.

(c) **TAKING IN DEFENSE OF SELF OR OTHERS.**—It shall not be a violation of this Act to take a marine mammal if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours. The Secretary may seize and dispose of any carcass.

(d) **ACT NOT TO APPLY TO INCIDENTAL TAKINGS BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN VESSELS OUTSIDE THE UNITED STATES EEZ.**—*The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.*

#### **§ 1374. Permits**

(a) **ISSUANCE.**—The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections 101(a)(5) or 306 [16 U.S.C. 1371(a)(5) or 1416], or subsection (h) of this section.

(b) **REQUISITE PROVISIONS.**—Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 103 of this title [16 U.S.C. 1373], and

(2) specify—

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals

(but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) IMPORTATION FOR DISPLAY OR RESEARCH.—

(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this Act, to—

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this Act. Such responsibilities shall be limited to—

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) IF THE SECRETARY—

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A) (i) or (iii) and is not reasonably likely to meet those requirements in the near future, the Secretary may revoke the permit in accordance with section 104(e) [subsec. (e) of this section], seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this Act for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3)(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [enacted April 30, 1994], the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

- (i) The species or stocks of marine mammals which may be harassed.
- (ii) The geographic location of the research.
- (iii) The period of time over which the research will be conducted.
- (iv) The purpose of the research, including a description of how the definition of bona fide research as established under this Act would apply.
- (v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

- (i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and
- (ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 115(b) of this title [16 U.S.C. 1383b(b)] or any recovery plan developed under section 4(f) of the Endangered Species Act of 1973 [16 U.S.C. 1533(f)] for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

- (i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;
- (ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alter-

natives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A). The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada, including polar bears taken but not imported prior to the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [enacted April 30, 1994], to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that—

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 113(d) [unclassified].

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after the date of enactment of this paragraph [enacted April 30, 1994]. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the re-

view not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall—

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before the date of the enactment of the Marine Mammal Protection Act Amendments of 1994 [enacted April 30, 1994] and



held in captivity for the purpose of public display shall be treated as though born after that date of enactment.

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this Act:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

(D) The date of acquisition or disposition of the marine mammal by the permit holder.

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d) APPLICATION PROCEDURES; NOTICE; HEARING; REVIEW.—

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this Act and the applicable regulations established under section 103 of this title [16 U.S.C. 1373].

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the

last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of title 5, United States Code [5 16 U.S.C. 1374 (1996) U.S.C. 701 et seq.], may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) MODIFICATION, SUSPENSION, AND REVOCATION.—

(1) The Secretary may modify, suspend, or revoke in whole or part any permit issued by him under this section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 103 of this title [16 U.S.C. 1373],

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) POSSESSION OF PERMIT BY ISSUEE OR HIS AGENT.—Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking [taking or] importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) FEES.—The Secretary shall establish and charge a reasonable fee for permits issued under this section.

[(h) GENERAL PERMITS.—

[(1) Consistent with the regulations prescribed pursuant to section 103 of this title [16 U.S.C. 1373] and to the requirements of section 101 of this title [16 U.S.C. 1371]; the Secretary may issue general permits for the taking of such marine mammals, together with regulations to cover the use of such general permits.

[(2)(A) Subject to subparagraph (B), the general permit issued under paragraph (1) on December 1, 1980 to the American Tunaboat Association is extended to authorize and govern the taking of marine mammals incidental to commercial purse seine fishing for yellowfin tuna during each year after December 31, 1984.

[(B) The extension granted under subparagraph (A) is subject to the following conditions:

[(i) The extension shall cease to have force and effect at the time the general permit is surrendered or terminated.

[(ii) The permittee and certificate holders shall use the best marine mammal safety techniques and equipment that are economically and technologically practicable.

[(iii) During the period of the extension, the terms and conditions of the general permit that are in effect on the date of the enactment of this paragraph [enacted July 17, 1984] shall apply, except that—

[(I) the Secretary may make such adjustments as may be appropriate to those terms and conditions that pertain to fishing gear and fishing practice requirements and to permit administration;

[(II) any such term and condition may be amended or terminated if the amendment or termination is based on the best scientific information available, including that obtained under the monitoring program required under paragraph (3)(A); and

[(III) during each year of the extension, not to exceed 250 coastal spotted dolphin (*Stenella attenuata*) and not to exceed 2,750 eastern spinner dolphin (*Stennella longirostris*) may be incidentally taken under the general permit, and no accidental taking of either species is authorized at any time when incidental taking of that species is permitted.

[(iv) The Secretary shall, by January 1, 1989, prescribe regulations to ensure that the backdown procedure during sets of the purse seine net on marine mammals is com-

pleted and rolling of the net to sack up has begun no later than thirty minutes after sundown. The Secretary may waive or otherwise modify such regulations for—

[(I) a designated certificate holder on an observed trip if the Secretary determines, based on observer reports, that such restriction is not necessary because the certificate holder has consistently utilized fishing techniques and equipment so as to result in an incidental marine mammal mortality rate during sundown sets that is no higher than the average such rate for the fleet during daylight sets; or

[(II) all certificate holders on observed trips if the Secretary determines that such restriction is not necessary because all certificate holders have developed and are utilizing fishing techniques and equipment that assure that the incidental marine mammal mortality rate during sundown sets will be no higher than such rate during daylight sets.

[(v) The Secretary may authorize, after public notice and opportunity for comment, designated certificate holders to conduct experimental fishing operations on observed trips, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce the incidental mortality of marine mammals in the course of commercial yellowfin tuna fishing operations, and the Secretary may waive such terms and conditions of the general permit and this section, other than the quotas on incidental taking of marine mammals and the prohibition against encircling pure schools of certain species of marine mammals, as the Secretary determines to be necessary and appropriate for the conduct of such experimental fishing.

[(vi) The Secretary, after public notice and opportunity for comment and consultation with the skippers' panel of experts established pursuant to the general permit, shall develop and implement by not later than the beginning of the 1990 fishing season a system of performance standards to maintain the diligence and proficiency of certificate holders in the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable. The system shall include such arrangements as are necessary for the identification of certificate holders whose incidental marine mammal mortality rate is consistently and substantially higher than the average rate of the fleet, and for the supplemental training and observation of such certificate holders, and provisions for suspension or revocation of certificates of inclusion of those certificate holders whose unacceptably high rate of incidental taking reflects a lack of diligence or proficiency in the use of the best marine mammal safety techniques and equipment.

[(vii) It shall be unlawful to use any explosive devices other than class C explosive pest control devices in the

course of commercial yellowfin tuna fishing subject to the general permit. The Secretary shall prescribe regulations, effective April 1, 1990, to prohibit or restrict the use of class C explosive pest control devices in the course of commercial yellowfin tuna fishing unless the Secretary determines, based on a study which the Secretary shall undertake, that the use of such devices does not result in physical impairment or increased mortality of marine mammals.

[(viii) During the 1989 and subsequent fishing seasons, each certificated vessel shall carry on every fishing trip subject to this subsection an official observer certified by the Secretary or by the Inter-American Tropical Tuna Commission for the purpose of conducting research and observing fishing operations unless, for reasons beyond the control of the Secretary, an observer is not available for such purpose. The Secretary may waive this requirement after the 1991 fishing season and establish a less extensive observer program if the Secretary, after notice and opportunity for comment, determines that such an alternative program will provide sufficiently reliable information.

[(ix) The Secretary shall annually convene meetings with representatives of conservation and environmental organizations, the commercial tuna fishing industry, and other interested persons for the purpose of discussing the results of efforts to reduce the incidental mortality and serious injury of marine mammals under this subsection as well as throughout the international fleet as a whole and developing plans for such efforts during the next year. On or before April 1, 1992, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a comprehensive report on the results of such efforts. The report shall discuss the results of the scientific research programs, performance standards, observer program, prohibition on sun-down sets, development of alternative fishing techniques, and other efforts required by this section, and shall include recommendations for such action as the Secretary considers necessary and desirable to reduce further the total mortality and serious injury of marine mammals in the course of commercial yellowfin tuna fishing throughout the international fleet.

[(C) The quota on the incidental taking of coastal spotted dolphin and eastern spinner dolphin under paragraph (2)(B)(iii)(III) shall be treated—

[(i) as within, and not in addition to, the overall annual quota under the general permit on the incidental taking of marine mammals; and

[(ii) for purposes of paragraph (2)(B)(iii)(II), as a term of the general permit in effect on the date of the enactment of this paragraph [enacted July 17, 1984].

[(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least

five consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

[(B) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the monitoring program), that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) is having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

[(C) For each year after 1984, the Secretary shall include in his annual report to the public and the Congress under Section 103(f) [16 U.S.C. 1373(f)] a discussion of the proposed activities to be conducted each year as part of the monitoring program required by subparagraph (A).

[(D) There are authorized to be appropriated to the Department of Commerce for purposes of carrying out the monitoring program required under this paragraph not to exceed \$4,000,000 for the period beginning October 1, 1984, and ending September 30, 1988.]

(h) *GENERAL PERMITS.*—

(1) *Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.*

(2) *Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 304 of this Act, subject to the regulations issued pursuant to section 302 of this Act.*

#### CHAPTER 31. MARINE MAMMAL PROTECTION

##### CONSERVATION AND PROTECTION OF MARINE MAMMALS

16 U.S.C. 1378 (1996)

#### **§ 1378. International program**

(a) *DUTIES OF SECRETARY.*—The Secretary, through the Secretary of State, shall—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of all marine mammals covered by this Act;

(2) initiate—

(A) negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species or population stock of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals, with the Secretary of State to prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums; [and]

(B) discussions with foreign governments whose vessels harvest yellowfin tuna with purse seines in the eastern tropical Pacific Ocean, for the purpose of concluding, through the Inter-American Tropical Tuna Commission or such other bilateral or multilateral institutions as may be appropriate, international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting such tuna, which should include provisions for (i) cooperative research into alternative methods of locating and catching yellowfin tuna which do not involve the taking of marine mammals, (ii) cooperative research on the status of affected marine mammal population stocks, (iii) reliable monitoring of the number, rate, and species of marine mammals taken by vessels of harvesting nations, (iv) limitations on incidental take levels based upon the best scientific information available, and (v) the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate;

(C) negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 U.S.T. 230; TIAS 2044) which will incorporate—

(i) the conservation and management provisions agreed to by the nations which have signed the Declaration of Panama and in the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, as opened for signature and ratification on December 4, 1995; and

(ii) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

(D) discussions with those countries participating, or likely to participate, in the International Dolphin Conservation Program, for the purpose of identifying sources of funds needed for research and other measures promoting effective protection of dolphins, other marine species, and the marine ecosystem;

(3) encourage such other agreements to promote the purposes of this Act with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this Act;

(5) seek the convening of an international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after the date of the enactment of this Act [enacted Oct. 21, 1972] a full report on the results of his efforts under this section.

(b) CONSULTATIONS AND STUDIES CONCERNING NORTH PACIFIC FUR SEALS.—

(1) In addition to the foregoing, the Secretary shall—

(A) in consultation with the Marine Mammal Commission established by section 201 of this Act [16 U.S.C. 1401], undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this Act, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957, as extended (hereafter referred to in this subsection as the “Convention”), to determine what modifications, if any, should be made to the provisions of the Convention, or of this Act, or both, to make the Convention and this Act consistent with each other.

The Secretary shall complete the studies required under this paragraph not later than one year after the date of enactment of this Act [enacted Oct. 21, 1972] and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds—

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this Act consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this Act consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps



as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing.

(c) ANNUAL RESULTS; PROPOSALS.—The Secretary shall include a description of the annual results of discussions initiated and conducted pursuant to subsection (a)(2)(B), as well as any proposals for further action to achieve the purposes of that subsection, in the report required under section 103(f) of this title [16 U.S.C. 1373(f)].

#### CHAPTER 31. MARINE MAMMAL PROTECTION

##### CONSERVATION AND PROTECTION OF MARINE MAMMALS

### **§ 1380. Marine mammal research grants**

(a) AUTHORIZATION; RESEARCH CONCERNING YELLOWFIN TUNA; ANNUAL REPORT.—

[(1)] The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals. In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f) [16 U.S.C. 1373(f)].

[(2)] For purposes of identifying appropriate research into promising new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals, the Secretary shall contract for an independent review of information pertaining to such potential alternative methods to be conducted by the National Academy of Sciences with individuals having scientific, technical, or other expertise that may be relevant to the identification of promising alternative fishing techniques. The Secretary shall request that the independent review be submitted to the Secretary on or before September 8, 1989, and the Secretary shall submit the report of the independent review, together with a proposed plan for research, development, and implementation of alternative fishing techniques, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on or before December 5, 1989.】

(b) TERMS AND CONDITIONS.—Any grant or other financial assistance provided by the Secretary pursuant to this section shall be subject to such terms and conditions as the Secretary deems necessary to protect the interests of the United States and shall be made after review by the Marine Mammal Commission.

(c) GULF OF MAINE MARINE ECOSYSTEM PROTECTION WORKSHOP.—

(1) No later than 1 year after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [enacted April 30, 1994], the Secretary of Commerce shall convene a regional workshop for the Gulf of Maine to assess human-caused factors affecting the health and stability of that marine ecosystem, of which marine mammals are a part. The workshop shall be conducted in consultation with the Marine Mammal Commission, the adjacent coastal States, individuals with expertise in marine mammal biology and ecology, representatives from environmental organizations, the fishing industry, and other appropriate persons. The goal of the workshop shall be to identify such factors, and to recommend a program of research and management to restore or maintain that marine ecosystem and its key components that—

(A) protects and encourages marine mammals to develop to the greatest extent feasible commensurate with sound policies of resource management;

(B) has as the primary management objective the maintenance of the health and stability of the marine ecosystems;

(C) ensures the fullest possible range of management options for future generations; and

(D) permits nonwasteful, environmentally sound development of renewable and nonrenewable resources.

(2) On or before December 31, 1995, the Secretary of Commerce shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate a report containing the results of the workshop under this subsection, proposed regulatory or research actions, and recommended legislative action.

(d) **BERING SEA MARINE ECOSYSTEM PROTECTION PROGRAM.—**

(1) The Secretary of Commerce, in consultation with the Secretary of the Interior, the Marine Mammal Commission, the State of Alaska, and Alaska Native organizations, shall, not later than 180 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [enacted April 30, 1994], undertake a scientific research program to monitor the health and stability of the Bering Sea marine ecosystem and to resolve uncertainties concerning the causes of population declines of marine mammals, sea birds, and other living resources of that marine ecosystem. The program shall address the research recommendations developed by previous workshops on Bering Sea living marine resources, and shall include research on subsistence uses of such resources and ways to provide for the continued opportunity for such uses.

(2) To the maximum extent practicable, the research program undertaken pursuant to paragraph (1) shall be conducted in Alaska. The Secretary of Commerce shall utilize, where appropriate, traditional local knowledge and may contract with a qualified Alaska Native organization to conduct such research.

(3) The Secretary of Commerce, the Secretary of the Interior, and the Commission shall address the status and findings of the research program in their annual reports to Congress re-

quired by sections 103(f) and 204 of this Act [16 U.S.C. 1373(f), 1404].

#### CHAPTER 31. MARINE MAMMAL PROTECTION

##### CONSERVATION AND PROTECTION OF MARINE MAMMALS

### § 1385. Dolphin protection

(a) **SHORT TITLE.**—This section may be cited as the “Dolphin Protection Consumer Information Act”.

(b) **FINDINGS.**—The Congress finds that—

(1) dolphins and other marine mammals are frequently killed in the course of tuna fishing operations in the eastern tropical Pacific Ocean and high seas driftnet fishing in other parts of the world;

(2) it is the policy of the United States to support a worldwide ban on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins; and

(3) consumers would like to know if the tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on dolphins.

(c) **DEFINITIONS.**—For purposes of this section—

(1) the terms “driftnet” and “driftnet fishing” have the meanings given those terms in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note);

(2) the term “eastern tropical Pacific Ocean” means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, 160 degrees west longitude, and the western coastlines of North, Central, and South America;

(3) the term “label” means a display of written, printed, or graphic matter on or affixed to the immediate container of any article;

(4) the term “Secretary” means the Secretary of Commerce; and

(5) the term “tuna product” means a food item which contains tuna and which has been processed for retail sale, except perishable sandwiches, salads, or other products with a shelf life of less than 3 days.

(d) **LABELING STANDARD.**—

[(1) It is a violation of section 5 of the Federal Trade Commission Act [15 U.S.C. 45] for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term “Dolphin Safe” or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains—

[(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing; or

[(B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the

requirements for being considered dolphin safe under paragraph (2).】

(1) *It is a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term “Dolphin Safe” or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains—*

(A) *tuna harvested on the high seas by a vessel engaged in driftnet fishing;*

(B) *tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements of being considered dolphin safe under paragraph (2); or*

(C) *tuna harvested outside the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements for being considered dolphin safe under paragraph (3).*

【(2) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if—

【(A) the vessel is of a type and size that the Secretary has determined is not capable of deploying its purse seine nets on or to encircle dolphin; or

【(B)(i) the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally developed on or to encircle dolphin;

【(ii) the product is accompanied by a written statement executed by—

【(I) the Secretary or the Secretary’s designee, or

【(II) a representative of the Inter-American Tropical Tuna Commission, which states that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on or to encircle dolphin; and

【(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product.】

(2) *For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if—*

(A) *the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins; or*

(B)(i) *the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no dolphins were killed during the sets in which the tuna were caught;*

(ii) the product is accompanied by a written statement executed by—

(I) the Secretary or the Secretary's designee;

(II) a representative of the Inter-American Tropical Tuna Commission; or

(III) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program, which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and that such observer documented that no dolphins were killed during the sets in which the tuna in the tuna product were caught; and

(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product; and

(C) the written statements and endorsements referred to in subparagraph (B) comply with regulations promulgated by the Secretary which would provide for the verification of tuna products as dolphin safe.

(3) For purposes of paragraph (1)(C), tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if—

(A) it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; or

(B) in any fishing in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, it is accompanied by a written statement executed by the captain of the vessel and an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.

(4) No tuna product may be labeled with any reference to dolphins, porpoises, or marine mammals, except as dolphin safe in accordance with this subsection.

(e) ENFORCEMENT.—Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) that is false is liable for a civil penalty of not to exceed \$ 100,000 assessed in an action brought in any appropriate district court of the United States on behalf of the Secretary.

[(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 6 months after the date of the enactment of this Act [enacted Nov. 28, 1990], including regulations establishing procedures and requirements for ensuring that tuna products are labeled in accordance with subsection (d).]

(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 3 months after the date of enactment of the International Dolphin Conservation Program Act. In the development of

*these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall establish a domestic tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d), including provisions that address each of the following items:*

*(1) the use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported;*

*(2) additional measures to enhance current observer coverage, including the establishment of criteria for training, and for improving monitoring and reporting capabilities and procedures;*

*(3) the designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d);*

*(4) the reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set;*

*(5) the shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise;*

*(6) the use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d); and*

*(7) the provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this subsection.*

*The Secretary may make such adjustments as may be appropriate to the regulations promulgated under this subsection to implement an international tracking and verification program that meets or exceeds the minimum requirements established by the Secretary under this subsection.*

(g) [OMITTED]

(h) NEGOTIATIONS.—The Secretary of State shall immediately seek, through negotiations and discussions with appropriate foreign governments, to reduce and, as soon as possible, eliminate the practice of harvesting tuna through the use of purse seine nets intentionally deployed to encircle dolphins.

(i) EFFECTIVE DATE.—Subsections (d) and (e) shall take effect 6 months after the date of the enactment of this Act [enacted Nov. 28, 1990].

#### CHAPTER 31. MARINE MAMMAL PROTECTION

##### GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES

#### § 1411. Findings and policy

(a) FINDINGS.—The Congress finds the following:

(1) The yellowfin tuna fishery of the eastern tropical Pacific Ocean has resulted in the deaths of millions of dolphins.

(2) Significant awareness and increased concern for the health and safety of dolphin populations has encouraged a change in fishing methods worldwide.

(3) United States tuna fishing vessels have led the world in the development of fishing methods to reduce dolphin mortalities in the eastern tropical Pacific Ocean and United States tuna processing companies have voluntarily promoted the marketing of tuna that is dolphin safe.

[(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have indicated their willingness to participate in appropriate multilateral agreements to reduce, and eventually eliminate, dolphin mortality in that fishery.]

*(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce, with the goal of eliminating, dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.*

(b) POLICY.—It is the policy of the United States to—

(1) eliminate the marine mammal mortality resulting from the intentional encirclement of dolphins and other marine mammals in tuna purse seine fisheries;

[(2) secure appropriate multilateral agreements to reduce, and eventually eliminate, the mortality referred to in paragraph (1);

[(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets;]

*(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);*

*(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the International Dolphin Conservation Program;*

(4) secure appropriate multilateral agreements to ensure that United States tuna fishing vessels shall have continued access to productive tuna fishing grounds in the South Pacific Ocean and elsewhere; and

(5) encourage observer coverage on purse seine vessels fishing for tuna outside of the eastern tropical Pacific Ocean in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals.

**[§ 1412. International agreements to establish global moratorium to prohibit certain tuna harvesting practices**

[(a) IN GENERAL.—The Secretary of State, in consultation with the Secretary, may enter into international agreements which establish, in accordance with this title [16 U.S.C. 1411 et seq.], a global moratorium of at least 5 years duration to prohibit harvest-

ing tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals.

[(b) TERMS OF AGREEMENT.—Any agreement entered into under this section shall—

[(1) establish a moratorium described in subsection (a) which takes effect on March 1, 1994;

[(2) include an international research program and, notwithstanding the moratorium, authorize harvesting of tuna under that program;

[(3) provide for reviews and reports in accordance with section 304 [16 U.S.C. 1414] on results of research conducted under the research program;

[(4) require each country that is a party to the agreement to take all the necessary and appropriate steps to ensure compliance with the moratorium; and

[(5) encourage each country that is a party to the agreement to seek, through bilateral and multilateral negotiations, to encourage other countries that participate in fisheries to which the agreement applies to become parties to the agreement.

[(c) COMPLIANCE BY UNITED STATES WITH MORATORIUM.—The moratorium authorized under subsection (a) may be terminated prior to December 31, 1999, with respect to the United States for the harvesting of tuna in the eastern tropical Pacific Ocean only if—

[(1) the Secretary submits to the Congress in accordance with section 304(b) [16 U.S.C. 1414(b)] a recommendation that the moratorium be terminated; and

[(2) the recommendation is approved by enactment of a joint resolution of approval.]

**SEC. 302. AUTHORITY OF THE SECRETARY.**

**(a) REGULATIONS.—**

*(1) The Secretary shall issue regulations to implement the International Dolphin Conservation Program.*

*(2)(A) Not later than 3 months after the effective date of the International Dolphin Conservation Program Act, the Secretary shall issue regulations to authorize and govern the incidental taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.*

*(B) Regulations issued under this section shall include provisions—*

*(i) requiring observers on each vessel;*

*(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of marine mammals in fishing operations;*

*(iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;*

*(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to de-*



*tect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;*

*(v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes after sundown;*

*(vi) banning the use of explosive devices in all purse seine operations;*

*(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;*

*(viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;*

*(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;*

*(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing; and*

*(xi) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.*

*(C) ADJUSTMENTS TO REQUIREMENTS.—The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.*

*(b) CONSULTATION.—In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).*

*(c) EMERGENCY REGULATIONS.—*

*(1) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse effect on a marine mammal stock or species, the Secretary shall—*

*(A) notify the Inter-American Tropical Tuna Commission of his or her findings, along with recommendations to the Commission as to actions necessary to reduce incidental*

*mortality and serious injury and mitigate such adverse impact; and*

*(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.*

*(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.*

*(3) Emergency regulations prescribed under this subsection—*

*(A) shall be published in the Federal Register, together with an explanation thereof;*

*(B) shall remain in effect for the duration of the applicable fishing year; and*

*(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines that the reasons for the emergency action no longer exist.*

*(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.*

*(d) RESEARCH.—The Secretary shall, in cooperation with the nations participating in the International Dolphin Conservation Program and with the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program, including—*

*(1) devising cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;*

*(2) developing cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;*

*(3) carrying out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States;*

*(4) studying the effect of chase and encirclement on the health and biology of dolphin and dolphin populations incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean; and*

*(5) determining the extent to which the incidental take of non-target species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks, and nontarget species.*

*There are authorized to be appropriated to the Secretary \$1,000,000 to be used by the Secretary, acting through the National Marine Fisheries Service, to carry out paragraph (4). Upon completion of the study required by that paragraph, the Secretary shall submit a report containing the results of the study and any recommendations the Secretary may have to offer on the basis of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Commerce of the House of Representatives, and to the Inter-American Tropical Tuna Commission. The Secretary shall include a description of the annual results of research carried out under this subsection in the report required under section 303.”*

### **[§ 1413. Research programs**

**[(a) IN GENERAL.—**An agreement entered into under section 302 [16 U.S.C. 1412] shall—

**[(1) establish an international research program to develop methods of fishing for large yellowfin tuna—**

**[(A) without setting nets on dolphins or other marine mammals; or**

**[(B) by setting nets on dolphins or other marine mammals with zero set-caused mortality;**

**[(2) require that proposals for research under the program be reviewed and authorized by a competent regional organization;**

**[(3) require that research under the program be conducted by dedicated vessels that—**

**[(A) are authorized to conduct that research by a competent regional organization; and**

**[(B) have on board in accordance with section 305(a)(2) [16 U.S.C. 1415(a)(2)] an observer who is responsible to, and supervised by, a competent regional organization.**

**[(b) LIMITATIONS ON DOLPHIN MORTALITY.—**For the eastern tropical Pacific Ocean, an agreement entered into under section 302 [16 U.S.C. 1412] shall require that—

**[(1) the total number of research sets on dolphins conducted pursuant to this section during the period beginning March 1, 1994, and ending December 31, 1999, shall not exceed 400 annually, and that the total annual dolphin mortality shall not exceed 1,000;**

**[(2) the Inter-American Tropical Tuna Commission shall establish a panel to review and report on the compliance of the international yellowfin tuna fishery fleet with the limits established in paragraph (1) and make recommendations as appropriate; and**

**[(3) the Inter-American Tropical Tuna Commission shall establish an Advisory Board of technical specialists from the international communities of scientists, government agencies, environmental groups, and the fishing industry, to assist that commission in efforts to coordinate, facilitate, and guide research.**

**[(c) FUNDING.—**

**[(1) IN GENERAL.—** An agreement entered into under section 302 [16 U.S.C. 1412] shall establish fair and equitable mechanisms for funding research conducted pursuant to this section.

[(2) PROCEEDS OF RESEARCH HARVESTS.—An agreement entered into under section 302 [16 U.S.C. 1412] shall provide that the proceeds of any tuna harvested for the purpose of research conducted pursuant to this section should, to the extent possible, be used for funding research conducted pursuant to this section.]

[(3) LIMITATION ON USE OF UNITED STATES FUNDING.—Funding provided by the United States for research shall be used only for the purpose of developing methods of fishing for large yellowfin tuna that do not involve intentionally encircling dolphins or other marine mammals.]

[(d) REVIEW OF RESEARCH PROPOSALS.—The Marine Mammal Commission established under section 201 [16 U.S.C. 1401] shall—

[(1) review all research proposals submitted to the Inter-American Tropical Tuna Commission; and

[(2) recommend an appropriate response to each of those proposals, to the United States Commissioners on the Inter-American Tropical Tuna Commission.]]

#### **[§ 1414. Reviews, reports, and recommendations]**

[(a) REPORTS BY THE SECRETARY.—The Secretary shall submit annual reports to the Congress which include—

[(1) results of research conducted pursuant to section 303 [16 U.S.C. 1413];

[(2) a description of the status of stocks of yellowfin tuna;

[(3) an assessment of the economic impacts on the tuna industry and consumers caused by the moratorium established by agreements entered into under section 302 [16 U.S.C. 1412];

[(4) an assessment of the effectiveness of the moratorium in protecting dolphin populations in the eastern tropical Pacific Ocean;

[(5) results of reviews conducted under section 305(c) [16 U.S.C. 1415(c)];

[(6) copies of any international agreements or undertakings authorized by or related to this title;

[(7) an assessment of the impact on fishery resources, other than yellowfin tuna, of methods of fishing for large yellowfin tuna in the eastern tropical Pacific Ocean that do not involve the intentional encirclement of dolphins; and

[(8) any other relevant information.]

[(b) RECOMMENDATIONS OF THE SECRETARY.—If a competent regional organization under the auspices of which research is conducted pursuant to section 303 [16 U.S.C. 1413], or any country which participates in such an organization, submits to the United States a recommendation that a moratorium established by agreements entered into under section 302 [16 U.S.C. 1412] should be terminated prior to December 31, 1999, the Secretary shall—

[(1) review the information on which the recommendation is based;

[(2) consult with relevant Federal agencies, including the Marine Mammal Commission, and other interested persons; and

[(3) submit to the Congress a recommendation regarding the termination of the moratorium.]]

**SEC. 303. REPORTS BY THE SECRETARY.**

*Notwithstanding section 103(f), the Secretary shall submit annual reports to the Congress which include—*

- (1) results of research conducted pursuant to section 302;*
- (2) a description of the status and trends of stocks of tuna;*
- (3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;*
- (4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program's goals and objectives, including the protection of dolphin populations in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program;*
- (5) actions taken by the Secretary under section (101(a)(2)(B);*
- (6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title; and*
- (7) any other information deemed relevant by the Secretary.*

**[§ 1415. International commitments**

**[(a) LIMITATION ON APPLICATION OF BAN ON IMPORTS.—**Except as provided in subsection (b), the Secretary of the Treasury shall not, under section 101(a)(2) (A) and (B) [16 U.S.C. 1371(a)(2)(A) and (B)], ban the importation of yellowfin tuna or yellowfin tuna products from a country that transmits to the Secretary of State a formal communication in which the country commits to—

**[(1)** implement a moratorium of at least 5 years duration beginning March 1, 1994, on the practice of harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals unless the moratorium is terminated in accordance with section 302(c) [16 U.S.C. 1412(c)];

**[(2)** require an observer on each vessel of the country larger than 400 short tons carrying capacity which engages in purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, and ensure that at least 50 percent of all such observers are responsible to, and supervised by, a competent regional organization;

**[(3)** reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in 1992 to a level that is lower than such mortality in 1991 by a statistically significant margin; and

**[(4)** reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in the period beginning January 1, 1993, and ending February 28, 1994, to a level that is lower than such mortality in 1992 by a statistically significant margin.

**[(b) SUBSEQUENT BANS ON FISH AND FISH PRODUCT IMPORTS FOR FAILURE TO COMPLY WITH COMMITMENTS.—**

**[(1) BAN ON IMPORTS OF YELLOWFIN TUNA AND YELLOWFIN TUNA PRODUCTS.—**The Secretary, in consultation with the Secretary of State, shall periodically determine whether each country which has transmitted a formal communication expressing the commitments described in subsection (a) is fully

implementing those commitments. If the Secretary determines that any such country is not implementing those commitments—

[(A) the Secretary shall notify the President and the Congress of that determination; and

[(B) 15 days after such notification, the Secretary of the Treasury shall ban the importation from that country of all yellowfin tuna and yellowfin tuna products.

[(2) BAN ON IMPORTS OF OTHER FISH AND FISH PRODUCTS.—

[(A) IN GENERAL.—If—

[(i) a country does not, within 60 days after the establishment with respect to that country of a ban on importation under paragraph (1)(B), certify and provide reasonable proof to the Secretary that the country has fully implemented the commitment described in subsection (a)(1) or has taken the necessary actions to remedy its failure to comply with the commitments described in subsection (a) (2), (3), and (4); and

[(ii) the Secretary does not, before the end of that 60-day period, certify to the President that the country has provided such certification and proof;

the President shall direct the Secretary of the Treasury to ban the importation from that country of all articles (other than those subject to an importation ban under paragraph (1)(B)) that are classified under one or more of those fish and fish product categories that the President, subject to subparagraph (B), considers appropriate to carry out this paragraph.

[(B) BAN CRITERIA.—The one or more fish and fish product categories to which the President imposes an import ban under subparagraph (A) with respect to a country must be a fish and fish product category or categories with respect to which the articles classified thereunder and imported from that country in the base year had an aggregate customs valuation equal to 40 percent of the aggregate customs valuation of all articles classified under all fish and fish product categories that were imported from that country during the base year.

[(C) DEFINITION OF BASE YEAR.—For purposes of subparagraph (B), the term “base year” means the calendar year immediately occurring before the calendar year in which the import ban under subparagraph (A) commences with respect to the country.

[(3) DURATION OF IMPORT BANS.—Bans on importation imposed under paragraphs (1) and (2) with respect to a country shall continue in effect until the Secretary determines that the country is implementing the commitments described in subsection (a).

[(4) IMPLEMENTATION OF IMPORT BANS.—The Secretary of the Treasury shall take such action as may be necessary or appropriate to implement importation bans imposed under paragraphs (1) and (2).

[(c) REVIEWS AND REPORTS.—The Secretary, in consultation with the Secretary of State, shall—

[(1) periodically review the activities of countries which have transmitted to the Secretary of State formal communications expressing the commitments described in subsection (a), to determine whether those countries are complying with those commitments; and

[(2) include the results of those reviews in annual reports submitted to the Congress pursuant to section 304(a) [16 U.S.C. 1414(a)].]

#### **[§ 1416. Permits for taking dolphins**

[(a) ADDITIONAL RESTRICTIONS UNDER GENERAL PERMIT.—Notwithstanding section 104(h) [16 U.S.C. 1374(h)], the general permit issued to the American Tunaboat Association on December 1, 1980, shall be subject to the following additional restrictions:

[(1) Total dolphin mortalities (including mortalities resulting from research) authorized by the permit shall not exceed 1,000 during the period beginning January 1, 1992, and ending December 31, 1992, and 800 during the period beginning January 1, 1993, and ending March 1, 1994.

[(2) No purse seine net may be deployed under the permit on or to encircle any school of dolphins in which any eastern spinner dolphin (*Stenella longirostris*) or coastal spotted dolphin (*Stenella attenuata*) is observed prior to release of the net skiff.

[(3) The permit shall expire March 1, 1994, unless no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 302 [16 U.S.C. 1412] before that date (notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country).

[(4) If no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 302 [16 U.S.C. 1412] before March 1, 1994, and notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country—

[(A) the total dolphin mortalities authorized by the permit for each year after 1992, including mortalities caused by research, shall not exceed the number of dolphin mortalities which occurred under the permit during the preceding year;

[(B) the total dolphin mortalities occurring under the permit each year shall continue to be reduced by statistically significant amounts each year to levels approaching zero by December 31, 1999;

[(C) the permit shall be subject to any additional restrictions that the Secretary considers appropriate; and

[(D) the permit shall expire December 31, 1999.

[(b) PERMITS REQUIRED FOR TAKING DOLPHINS FOR RESEARCH PURPOSES.—An agreement entered into under section 302 [16 U.S.C. 1412] shall not supersede or be interpreted to supersede any provision of this Act under which a permit under this Act is required for activities conducted pursuant to this title [16 U.S.C. 1411 et seq.].

[(c) MAJOR PURSE SEINE TUNA FISHING COUNTRY DEFINED.—For purposes of this section, the term “major purse seine tuna fishing country” means a country which on the effective date of this title has an active purse seine tuna fishing fleet of 20 or more vessels.]

**SEC. 304. PERMITS.**

*(a) IN GENERAL.—*

*(1) Consistent with the regulations issued pursuant to section 302, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of—*

*(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and*

*(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 302, with respect to each vessel.*

*(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorizations and issuing permits under this section.*

*(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.*

*(b) PERMIT SANCTIONS.—*

*(1) In any case in which—*

*(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 305;*

*(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 305; or*

*(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue,*

*the Secretary may—*

*(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;*

*(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;*

*(iii) deny such permit; or*



- (iv) *impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.*
- (2) *In imposing a sanction under this subsection, the Secretary shall take into account—*
  - (A) *the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and*
  - (B) *with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.*
- (3) *Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.*
- (4) *In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.*
- (5) *No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.*

#### **§ 1417. Prohibitions**

(a) **IN GENERAL.**—It is unlawful—

- [(1) for any person, after June 1, 1994, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe;
  - [(2) for any person or vessel that is subject to the jurisdiction of the United States, intentionally to set a purse seine net on or to encircle any marine mammal during any tuna fishing operation after February 28, 1994, except—
    - [(A) as necessary for scientific research approved by the Inter-American Tropical Tuna Commission;
    - [(B) in accordance with a recommendation that is approved under section 302(c)(2) [16 U.S.C. 1412(c)(2)]; or
    - [(C) as authorized by the general permit issued to the American Tunaboat Association on December 1, 1980 (including any additional restrictions applicable under section 306(a) [16 U.S.C. 1416(a)]), notwithstanding any agreement under section 302 [16 U.S.C. 1412] with a country that is not a major purse seine tuna fishing country (as that term is defined in section 306(c) [16 U.S.C. 1416(c)]);
  - [(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 305(b) (1) or (2) [16 U.S.C. 1415(b)(1) or (2)];]
- (1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been har-*

*vested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated steps, in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;*

*(2) except as provided for in subsection 101(d), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this title and regulations issued under pursuant to this title; and*

*(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);*

*(4) for any person to violate any regulation promulgated under this title;*

*(5) for any person to refuse to permit any duly authorized officer to board a vessel subject to that person's control for purposes of conducting any search or inspection in connection with the enforcement of this title [16 U.S.C. 1411 et seq.]; and*

*(6) for any person to assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (5).*

**(b) PENALTIES.—**

**(1) CIVIL PENALTY.**—A person that knowingly and willfully violates subsection (a) (1), (2), (3), (4), or (5) shall be subject to a civil penalty under section 105(a) [16 U.S.C. 1375(a)].

**(2) CRIMINAL PENALTY.**—A person that knowingly and willfully violates subsection (a)(5) or (a)(6) shall be subject to a criminal penalty under section 105(b) [16 U.S.C. 1375(b)].

**(c) CIVIL FORFEITURES.**—Any vessel (including its fishing gear, appurtenances, stores, and cargo) used, and any fish (or its fair market value) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by this section shall be subject to forfeiture to the United States in the manner provided in section 310 of the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1860].

**[(d) DOLPHIN SAFE TUNA.**—For purposes of this section, tuna or a tuna product is dolphin safe if—

**[(1)** it does not contain tuna that was harvested on the high seas by a vessel engaged in driftnet fishing, as that term is defined in section 4003 of the Driftnet Impact, Monitoring, Assessment, and Control Act of 1987 [16 U.S.C. 1822 note];

**[(2)** in the case of tuna or a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean, it is dolphin safe under subsection (d)(2) of the Dolphin Protection Consumer Information Act [16 U.S.C. 1385(d)(2)];

**[(3)** in the case of tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel, it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; and

[(4) in the case of tuna or a product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals, it is accompanied by a written statement executed by the captain of the vessel and by an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.]

**§ 1418. Authorization of appropriations**

There are authorized to be appropriated to the National Marine Fisheries Service for carrying out section [303 [16 U.S.C. 1413],] 302(d), \$3,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

